No. 2283

IN THE

United States Circuit Court of Appeals

NINTH CIRCUIT

MARY E. CRONEN,

Appellant,

vs.

WALTER BAKER MOORE,

Appellee.

Upon Appeal from the United States District Court For the District of Oregon.

TRANSCRIPT OF RECORD.

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Appellee.

Names and Addresses of Attorneys upon this Appeal:

For the Appellant:

Stott & Collier, Yeon Bldg., Portland, Ore.

For the Appellee:

A. E. Clark, Yeon Bldg., Portland, Ore.

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In the District Court of the United States, for the District of Oregon.

Be it Remembered, That on the 17 day of July, 1912, there was duly filed in the District Court of the United States for the District of Oregon, a Bill of Complaint in words and figures as follows, to wit:

[Bill of Complaint.]

In the District Court of the United States for the District of Oregon.

WALTER BAKER MOORE,

Complainant,

vs.

MARY E. CRONEN, and THE SECURITY SAVINGS & TRUST COMPANY, a corporation,

Defendants.

In Equity

To the Honorable Judges of the United States District Court for the District of Oregon:

Walter Baker Moore, a citizen of the United States and a citizen and resident and inhabitant of the State of Washington, brings this, his bill of complaint against Mary E. Cronen, a citizen, resident and inhabitant of the State of Oregon, and the Security Savings & Trust Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon, and doing business in Portland, Oregon, and a citizen and resident of Oregon. Thereupon your orator complains and says:

I.

That heretofore and in May, 1911, the above named defendant, Mary E. Cronen, brought an action at law in the Circuit Court of the State of Oregon for the County of Multnomah, against your complainant, Walter Baker Moore. That said action was duly and properly removed from said state court to this court where it is now pending and at issue. That said action at law, among other things, brought for the recovery by the said Mary E. Cronen against your complainant of the sum of $100,000.00 and the costs and disbursements of the action. That attached hereto and marked Exhibits "A" and "B" and hereby made a part of this bill as fully as if herein copied at length, are true copies of the complaint and of the answer in said action at law brought by the said Mary E. Cronen against your complainant as above stated. That there is now on file with the clerk of this court and as a part of the files and records of this court in the said action at law, a certified copy of said complaint, which certified copy your orator now tenders for the inspection of the court. That the original answer in said action at law is now on file and of record in the office of the clerk of this court and said original answer is now tendered as a part of this bill and for the inspection of the court. Your orator further shows that said complaint and said answer were duly verified and duly served and proof of service made, but that the said verifications, certifications and proof of service are omitted for the sake of brevity.

II.

And your orator shows that thereafter and on or about the 24th day of February, 1912, a full and complete settlement and adjustment of all matters and things in said action at law was arrived at and agreed upon and reduced to writing and thereupon and in said action at law, a stipulation in writing was entered into between the plaintiff and the defendant in said action at law through their respective attorneys, the said stipulation being signed by John F. Logan and John H. Stevenson, then, and theretofore the attorneys of record of the plaintiff in the said action at law, and being then and there duly authorized and empowered by their client to sign said stipulation, and the same was signed in behalf of the defendant by A. E. Clark his attorney of record, being then and there duly authorized so to do. That a true copy of said stipulation is hereto attached and marked Exhibit "C" and hereby made a part of this bill as fully as if herein copied at length. That your orator is unable to produce for the inspection of the court at this time the original stipulation for the reason that the same when signed was deposited in the custody of the defendant Security Savings & Trust Company, and that said defendant neglects and declines to surrender the same into the custody of your orator, or into the custody of this court, unless ordered by this court so to do. And your orator is unable to produce at this time a certified copy of said stipulation in connection with the bill and for the inspection of the court for the reason that said stipulation is not on

file or on record in the office of any public officer authorized by law to certify documents filed or recorded.

III.

And your orator further shows the Honorable Court that at the time the stipulation was entered into referred to in the preceding paragraph of this bill, the defendant, Mary E. Cronen, plaintiff in the said action at law, and for full and adequate consideration, duly executed a certain written release of your orator, which, among other things, did release, acquit and discharge your orator and his heirs, personal representatives and assigns, of all claims and demands whatsoever, arising out of, or in anywise connected with the said action at law, and also all other claims and demands of whatsoever nature. That a true copy of said release as the same was finally executed, signed and deposited in the custody of the defendant, Security Savings & Trust Company, is hereto attached and marked Exhibit "D", and hereby made a part of this bill as fully as if herein copied at length. That your orator is unable to tender for the use or inspection of the court the original release, or a certified copy thereof, for the reason that the original is in the possession of the Security Savings & Trust Company, which said company neglects and refuses to deliver it to your orator or into the custody of this court except upon the decree or order of this court so to do. And your orator is unable to procure and present a certified copy of said release in connection with the bill for the reason that said release

is not on file or of record in the office of any public officer authorized or competent to certify as required by law, or otherwise.

IV.

Your orator further shows to the court that at the time said stipulation was signed and at the time the release was signed, said documents being hereinbefore referred to as Exhibits "C" and "D", there was prepared and executed as a part of the same transaction, bearing date the 24th day of February, 1912, addressed to Security Savings & Trust Company, duly executed by A. E. Clark, attorney of record for Walter Baker Moore in said action at law, and by John F. Logan and John H. Stevenson, attorneys of record for Mary E. Cronen in said action at law, an instrument, a true copy of which is hereto attached and marked Exhibit "E" and hereby made a part of this bill as fully as if herein copied at length. That said written instrument, among other things, provided for the deposit with the said defendant, Security Savings & Trust Company, of the stipulation for dismissal of said action at law, a copy of which stipulation is hereinbefore referred to and is attached to this bill as Exhibit "C"; also for the release and discharge of Walter Baker Moore which is hereinbefore mentioned, and a copy of which is attached to this bill and marked Exhibit "D" and also for the deposit of a statement signed by Walter Baker Moore certifying, among other things, of the high moral character of the plaintiff, Mary E. Cronen. That said Exhibit "E" also recited that settlement of all

matters and things between the parties to the action at law had been agreed upon and that the sum of $3,000.00 had been paid. It also provided for the payment of an additional sum of $3,000.00 within 90 days from the date of the instrument, to-wit, within 90 days from February 24th, 1912, and further provided that when such sum was paid to the defendant, Security Savings & Trust Company, to be paid to John H. Stevenson, attorney for the said Mary E. Cronen, or to his order, that the said Security Savings & Trust Company was to deliver to A. E. Clark, as attorney for Walter Baker Moore, the said stipulation hereinbefore referred to as Exhibit "C" and there was to be delivered to the said John H. Stevenson, as attorney for Mary E. Cronen, the statement hereinbefore referred to, signed by Walter Baker Moore, which among other things, certified to the high moral character of the said Mary E. Cronen. And said instrument further provided that in the event the said sum of $3,000.00 was not paid within the 90-day period aforesaid, the said stipulation for dismissal and the said release should be delivered to the said John H. Stevenson, attorney for Mary E. Cronen, and the statement signed by Walter Baker Moore above referred to, was to be delivered to A. E. Clark, the attorney for said Moore.

V.

Your orator further shows to this court that there was a full and complete settlement of the said cause agreed upon and that all of the terms, conditions and agreements with respect thereto were incorporated

in, and are contained in the said stipulation for dismissal, the said release and the said instrument under date of February 24th, 1912, addressed to the Security Savings & Trust Company, a true copy of which is hereto attached as Exhibit "E". That on or about the 24th day of February, 1912, and immediately following the execution of said papers, your orator, through his attorney A. E. Clark, paid and caused to be paid to the plaintiff in said law action, to-wit, the said Mary E. Cronen, through her attorneys, John F. Logan and John H. Stevenson, the sum of $3,000.00, which sum was so paid on the 24th day of February, 1912, or within a day or two thereafter, and at the same time said papers were deposited with the Security Savings & Trust Company. That said sum of $3,000.00 was so paid by your orator under and pursuant to said settlement and said stipulation, release and other papers hereinbefore referred to and was received and accepted by the said Mary E. Cronen in like manner and has been retained and kept by the said Mary E. Cronen, and has not been repaid, and no offer to repay the same has ever been made.

VI.

And your orator further shows that immediately following the execution of said stipulation, release and communication addressed to Security Savings & Trust Company, that is to say, on the 24th day of February, 1912, or within a day or two thereafter, and at the same time that your orator caused to be paid to the plaintiff in said law action, to-wit, Mary E. Cronen, the sum of $3,000.00, there was deposited in the

custody of the Security Savings & Trust Company, and pursuant to the terms of the said communication addressed thereto a true copy of which is attached to this bill as Exhibit "E", all of the papers therein referred to, to-wit, the said stipulation for dismissal, the said release and discharge of Walter Baker Moore, and the said statement signed by Walter Baker Moore, and the said Security Savings & Trust Company took and received the custody of the said original papers signed by the parties or by their attorneys, all as hereinbefore alleged, and has kept and retained the custody thereof ever since, and still keeps and retains the said custody and declines and refuses to surrender up the custody thereof except pursuant to the decree or order of this court, all as hereinbefore more specifically alleged.

VII.

And your orator further shows to this court that on the 6th day of May, 1912, and less than 90 days after the 24th day of February, 1912, your orator caused to be paid to, and deposited with, said Security Savings & Trust Company, in strict and full accordance with the terms of said settlement, and particularly the terms of Exhibit "E", the sum of $3,000.00, said sum being the balance due upon the settlement with the said Mary E. Cronen, the said sum being so paid to, and deposited with the Security Savings & Trust Company with instructions and authority to it to take and pay and deliver the said money in accordance with the said Exhibit "E". That said money was so taken and received by Security Savings

& Trust Company on the date aforesaid under and pursuant to the terms of said settlement and the terms of said Exhibit "E" and without reservation or condition, the said money has been so kept and retained from your orator, and in this connection, your orator is informed by Mr. Jubitz, the secretary of said Security Savings & Trust Company, and therefore believes and alleges the fact to be upon such information, that the said Security Savings & Trust Company ever since said 6th day of May, 1912, has kept and held, and still keeps, and holds, the said sum of $3,000.00 payable at any time upon request or demand, pursuant to the communication addressed to the Security Savings & Trust Company, a true copy of which is hereto attached as Exhibit "E".

VIII.

And your orator further shows to this court that on or about the 4th day of April, 1912, the said Mary E. Cronen, prepared, signed and caused to be delivered to defendant, Security Savings & Trust Company, a written communication in words and figures as follows, to-wit:

"Portland, Oregon, April 4, 1912.

Security Savings & Trust Company,

Portland, Oregon.

Gentlemen:

You are hereby notified that I have rescinded any and all agreements heretofore made with Walter Baker Moore, Frank Allen Moore, Margaret Gleason Moore, Miles C. Moore, or A. E. Clark, their attorney, in regard to the litigation between myself and

Walter Baker Moore, and together with the escrow agreement between myself and said parties or either of them, and which was deposited with you on or about the 27th day of February, 1912, wherein you were to deliver certain papers executed by me and certain papers executed by some of said parties, upon the payment of $3,000.00 for my credit.

Said escrow agreement was obtained by fraud and deceit and I will not be bound thereby. In case said escrow is delivered I will be damaged in the sum of $100,000.00 and I will hold you accountable therefor. You are therefore hereby notified not to deliver the said escrow to any of said parties or to any one or I will hold you for the said damages.

Yours very truly,
(Sgd) MARY E. CRONEN."

That there was no cause, reason or justification for such communication and the only purpose and effect thereof was to embarrass, annoy, and put your orator to expense and difficulty in procuring the delivery to him of the stipulations for, and dismissal of said law action and the release of himself executed by Mary E. Cronen. That in truth and in fact the said stipulation for dismissal, the said release, and all other papers and documents hereinbefore referred to as having been executed by Mary E. Cronen, or by her attorneys, other than the said communication to the Security Savings & Trust Company, were prepared in the office of the attorneys for said Mary E. Cronen, and were at the same place approved and signed.

That when your orator caused to be paid to Security Savings & Trust Company on May 6th, 1912, the said sum of $3,000.00, he demanded and caused to be demanded through his attorney A. E. Clark, delivery to him through the said attorney of the stipulation for dismissal and the said release of your orator. That repeatedly thereafter your orator, through his said attorney, caused like demand to be made. That on the 6th day of May, 1912, and at all times thereafter, the said Security Savings & Trust Company has failed, neglected and refused to deliver to your orator, through his attorney, A. E. Clark, or otherwise, the said stipulation, or the said release, or either thereof, and the said defendant, Security Savings & Trust Company, alleged and stated to your orator as its reason for so neglecting and refusing to make delivery that it has received the said communication signed by Mary E. Cronen, bearing date April 4, 1912, and hereinbefore set forth at length; that it has no pecuniary interest in the controversy between the parties, if any such controversy exists, and that it does not desire to become involved in litigation or subject itself to any suit or action for damage or otherwise, and that it does not intend to, and will not, deliver to your orator, or upon his order, the said stipulation, or the said release, or either thereof, unless required and compelled so to do by the decree or order of this court, or unless the said Mary E. Cronen personally, or through her duly authorized agents, or attorneys, shall withdraw and rescind the said notice of April 4, 1912, or authorize and direct the said Se-

curity Savings & Trust Company to make delivery of said papers.

IX.

And your orator further shows that the said Mary E. Cronen has refused and neglected to withdraw said notice or authorize and direct the said Security Savings & Trust Company to make said delivery, but on the contrary refuses so to do and your orator, through his attorney, A. E. Clark, has made repeated demands on the said Mary E. Cronen, through her attorneys, to rescind the said notice of April 4, 1912, or to authorize and direct the Security Savings & Trust Company to make delivery of the stipulation and release of your orator and to carry out the terms of the settlement as agreed upon, all as hereinbefore alleged, and that at all times the said Mary E. Cronen, through her said attorneys, has neglected and comply with said demands.

X.

And your orator further shows that the said action at law is now pending and is now at issue in this court, brought by Mary E. Cronen against your orator, wherein the said Cronen prays for a recovery against your orator in the sum of $100,000.00 together with the costs and disbursements of the action. That as hereinbefore alleged, your orator has paid to the said Cronen and the said Cronen has accepted, and retains, the sum of $3,000.00 and your orator has paid into Security Savings & Trust Company for the use and benefit of said Cronen, to be paid to her, through her attorneys of record, the additional sum of $3,000.00,

that is to say, your orator has paid, and has parted with, the sum of $6,000.00 for said stipulation of dismissal and said release and for the purpose of settling, adjusting and being relieved from the said claim named in said law action of $100,000.00 and said release and said stipulation for dismissal and the delivery thereof to your orator can only be procured through the interposition of a court of equity, and as ancillary to said law action and the value thereof to your orator exceeds $3,000.00 and are of the actual value of upwards of $300,000.00 exclusive of interest and costs. That the matter in controversy and the amount in dispute in this cause exceeds the sum and value of $3,000.00 exclusive of interest and costs, and that in truth and in fact, the matters in controversy and the amount in dispute, exclusive of interest and costs is the sum of $100,000.00

XI.

And your orator further shows to this court that he has been deprived of his property, to-wit, the sum of $6,000.00, as aforesaid; that he has been put to great expense, annoyance in effecting aforesaid settlement, employing counsel and other expenses; that the said Mary E. Cronen threatens and intends to proceed with the prosecution of the said action at law and to retain the sum of $3,000.00 paid to her, to refuse, and if possible, to prevent a delivery to your orator of the stipulation of dismissal of said action at law and the release of your orator to the end that she may carry on and prosecute in her favor, if possible, said action at law and in the meantime so

wrong, cheat and defraud your orator as to retain the money so paid to her and to prevent and deprive your orator of his right and opportunity to procure and cause to be filed in this court the stipulation for the dismissal of said action at law as aforesaid and the release of your orator which might be pleaded and produced upon the trial of said action at law as a complete bar to further prosecution of said action at law.

XII.

And your orator further shows to the court that he is informed and believes, and therefore alleges, that the said Mary E. Cronen in complete and total defiance of the said stipulation and said release and the said settlement is now preparing, has consulted counsel to that end and threatens and intends to, and will do so unless restrained by the court, to go into another jurisdiction, to-wit, the State of California, where your orator is, and bring suit or action against your orator upon the claim and demands involved in the said action at law.

XIII.

And your orator further shows to the Court that the defendant, Security Savings & Trust Company, is not a party to the action at law, and therefore is not amenable to any order or process of the Court in said case. That defendant retains the said stipulation for dismissal, and the release of your orator and refuses to deliver them, or either thereof, to your orator, or to the Court because of the notice served upon it under date of April 4th, 1912, herein-

before referred to do so unless coerced to make such delivery by the decree or order of this Court. In order that your orator may make proper defense in the said action at law and plead and establish an estoppel created by the papers hereinbefore referred to, and the acts and conduct of the parties aforesaid, and in order that your orator may obtain possession of and cause to be filed in this Court, the stipulation above referred to for the dismissal of the said action upon the merits and procure for his own possession the release above referred to, it has become and is necessary to seek the aid of a Court of Equity in a proceeding wherein the said Security Savings & Trust Company is a party, and the said Mary E. Cronan is a party, to the end that the Court may enforce the terms of the agreement under which the said stipulation and the said release were deposited in the custody of the defendant, the Security Savings & Trust Company, and require and compel the surrender of the said papers to your orator, or to the Registry of the Court, to be dealt with in accordance with the said agreement, and your orator is unable to obtain the said, or any other appropriate relief, in any other tribunal.

XIV.

Your orator further shows to the Court that by reason of the aforesaid wrongful acts of the defendant Mary E. Cronan, and the notice to the Security Savings & Trust Company under date of April 4, 1912, the Security Savings & Trust Company was prevented from delivering the said stipulation, and the

said release to your orator, and by reason of all the premises, and through the unjustifiable conduct of the said Mary E. Cronen your orator has been greatly damaged, has been put to such expense in the employment of counsel, the bringing of this suit and the time spent and service performed in seeking to secure the due execution of the terms of the settlement, all to the great damage and expense of your orator in the sum, to-wit, upwards of One Thousand Dollars ($1,000.00).

XV.

WHEREFORE doth your orator pray, that the defendant Mary E. Cronen be perpetually enjoined and restrained from further prosecuting the said action at law referred to in the allegations of this Bill, wherein she is plaintiff and your orator is the defendant, and that provisionally and pending the final determination of this cause, that the said defendant Mary E. Cronen be enjoined and restrained from prosecuting the said action at law, or take any steps or proceedings whatsoever with respect thereto, and that she be so provisionally enjoined and restrained from bringing or prosecuting in any other Court, or in any other jurisdiction any suit or action whatsoever based upon the matters, things or causes of action embraced in the said action at law, or upon any other matter or thing, whatsoever, embraced within the release executed by her on February 24th, 1911, as more fully alleged heretofore in this Bill; that the defendant Security Savings & Trust Company, be required

and commanded to bring into this Court the stipulation for dismissal, a true copy of which is attached to this Bill as Exhibit "C", the release of your orator executed by Mary E. Cronen, a true copy of which is attached to this Bill as Exhibit "D", and likewise the sum of Three Thousand Dollars ($3,000.00), deposited and left with the said defendant Security Savings & Trust Company by your orator on the 6th day of May, 1912, and all other papers and documents deposited in connection with the said settlement, and under and pursuant to the escrow agreement, to be dealt with by this Court in such manner as may be meet and equitable, and that a decree be entered herein for a perpetual injunction, as hereinbefore prayed for, for the delivery of the said release to your orator, the filing, entering and carrying into effect in said action at law of the stipulation for dismissal, and the disbursement of the said sum of Three Thousand Dollars ($3,000.00) in accordance with the agreement pursuant to which the same was deposited; and that this honorable Court take account of the expense and damage suffered and sustained by your orator, and award the same to him, and for the payment thereof and of the costs and disbursements of this suit impound sufficient of the said sum of Three Thousand Dollars ($3,000.00), so brought into this Court, and direct that the Clerk of this Court apply to that purpose, and from such fund, sufficient to pay all such costs and disbursements and any sum awarded as costs and damages, and that your orator have such other and further relief as to this Honorable Court

may seem meet, and as shall be agreeable to equity.

And for so much as your orator can have no adequate relief, except in this Court, to the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief prayed for, and may make full, true and direct answers, but not under oath, answer under oath being hereby expressly waived, according to their best and utmost knowledge, information, remembrance or belief, to the several matters or things averred and charged in this Bill, as fully and particularly as if separately and severally interrogated as to each and every of said matters, and may be compelled to do and perform each and every act and thing required by the decree of this Court to be done and performed.

THEREFORE, May it please your honors to grant unto your orator a writ of injunction provisionally, as well as perpetually, as herein prayed for, issuing out of and under the seal of this Honorable Court, commanding and restraining the defendant Mary E. Cronen, as hereinbefore in that behalf prayed. And may it please your honors to grant unto your orator the writ of subpoena issuing out of and under the seal of this Court, to the said defendants, Mary E. Cronen and the Security Savings & Trust Company, commanding them and each thereof by a certain day, and under a certain penalty, to be and appear in this Court, then and there to answer the premises, and

to stand to and abide such order and decree as may be made against them.

And your orator will ever pray,

WALTER BAKER MOORE,
Complainant, by his solicitor.
ALFRED E. CLARK,
His solicitor.

ALFRED E. CLARK,
M. H. CLARK,
Solicitors for Complainant.

STATE OF OREGON,
COUNTY OF MULTNOMAH.—ss.

I, A. E. Clark, being first duly sworn upon oath depose and say that I am the solicitor for the above named Complainant, Walter Baker Moore. That I prepared, and have read the foregoing Bill of Complaint, and know the contents thereof, and have personal knowledge of the matters therein stated except as to such matters as are therein stated distinctly upon information and belief, and that the matters contained in said Bill are true of my own knowledge, except as to such matters as are therein stated upon information and belief, and as to such matters, that I believe them to be true.

This verification is not made by the Complainant for the reason that he is at the present time absent in the state of California, and that your affiant has in fact carried on and conducted the negotiations, and looked after the preparation and execution of all of the papers and other documents referred to in the Bill

of Complaint and involved in this case, and has a more accurate knowledge of the facts than has the Complainant.

ALFRED E. CLARK,
Affiant.

Subscribed and sworn to before me this 17th day of July, A. D. 1912.

J. S. ALEXANDER,
Notary Public for Oregon.

[Exhibit A.]

In the Circuit Court of the State of Oregon for the County of Multnomah.

COMPLAINT.

MARY E. CRONEN,
Plaintiff,

vs.

WALTER BAKER MOORE,
Defendant.

Comes now the plaintiff and for cause of action against the defendant complains and alleges as follows, to-wit:

I.

That heretofore, to-wit, on the 12th day of July, 1909, at the City of Portland, in the State of Oregon, in consideration that the plaintiff, being then sole and unmarried, at the request of said defendant promised to marry the plaintiff and it was then and there agreed by and between the plaintiff and the defendant that they would be married on the return of the defendant from a journey to the State of California,

which journey the defendant was then about to begin and make, it being then and there understood and agreed that he, the defendant, would be absent from the State of Oregon on said journey only about three weeks and that the plaintiff and the defendant would, upon the return of the defendant from said journey to the State of California, be married to each other. That the defendant, within two or three days after said contract and agreement entered into as hereinbefore set out, did leave the State of Oregon for the State of California and was absent from the State of Oregon about two weeks, when he returned again to the City of Portland, Oregon, and it was then and there agreed by and between the plaintiff and the defendant that the marriage of the plaintiff and the defendant should take place and be solemnized some time in the month of January, 1910. That in the month of January, 1910, the plaintiff requested the defendant to marry her in accordance with his said contract and agreement, but so to do the defendant failed and refused and continued so to fail and refuse until the 28th day of February, 1910, when the defendant promised and agreed that if the plaintiff would wait until the 1st day of June, 1910, and continue the said contract of marriage in force and effect until said time, he, the defendant, would, on the said 1st day of June, 1910, marry her, the plaintiff, and in consideration of defendant's said promise, the plaintiff agreed thereto and it was then and there agreed by and between the plaintiff and the defendant that they, the plaintiff and the defendant, would

marry each other on the 1st day of June, 1910. That on the said 1st day of June, 1910, and at divers times thereafter the plaintiff requested the defendant to marry her in accordance with his said contract and agreement, but so to do the defendant failed and refused and ever since said time has failed and refused.

II.

That the plaintiff confiding in and relying upon said promise of the said defendant, as hereinbefore set out, has always since remained and still is sole and unmarried and has been for and during all of the time aforesaid and now is ready and willing to marry the defendant.

III.

That the engagement, contract and agreement of the plaintiff and the defendant to be married to each other, after said contract and agreement was entered into between them, became and was widely known and published among their friends and acquaintances and the public generally and was widely discussed among their said friends, acquaintances and the public generally and the plaintiff received many congratulations upon her prospective marriage with the defendant and was made, in state of mind very happy over the prospect of home and wifehood and that by reason of the failure and refusal of the defendant to marry her in accordance with his contract, promise and agreement as aforesaid, plaintiff was and is much embarrassed, mortified and humiliated and was made

and caused to suffer great worry, shock, shame and distress of mind and to have her hope and view of home and wifehood shattered and destroyed by reason of the failure and refusal of the defendant to marry her according to his contract, promise and agreement as hereinbefore set out.

IV.

That the defendant refuses to marry the plaintiff, although on the 1st day of June, 1910, and at divers times thereafter and prior to the commencement of this action, the plaintiff has requested him so to do and that by reason of the failure and refusal of the defendant to marry the plaintiff as agreed by and between them, and by reason of the facts, matters and things hereinbefore set out, the plaintiff has been and is damaged in the full sum of One Hundred Thousand ($100,000.00) Dollars.

V.

That during all of the times in this complaint mentioned and set out, the plaintiff was sole and unmarried and willing and capable of contracting marriage and entering into the marriage contract.

WHEREFORE plaintiff prays for a judgment against the defendant in the full sum of One Hundred Thousand ,$100,000.00) Dollars, and for her costs and disbursements in this action incurred.

JOHN F. LOGAN,
JOHN H. STEVENSON,
Attorneys for plaintiff.

[Exhibit B.]

In the Circuit Court of the United States for the District of Oregon.

ANSWER.

MARY E. CRONEN,

Plaintiff,

v.

WALTER BAKER MOORE,

Defendant.

Now comes the defendant and answering the complaint of the plaintiff herein.

I.

Admits that during all the times mentioned in the complaint, that plaintiff was an unmarried woman and that during all of said times defendant was an unmarried man.

II.

Save and except as admitted in the last preceding paragraph of this answer, this defendant denies each and every allegation, matter and thing contained in the complaint of the plaintiff herein.

WHEREFORE defendant prays that this action be dismissed upon the merits thereof and that he have judgment against the plaintiff for his costs and disbursements.

A. E. CLARK,
Attorney for Defendant.

[Exhibit C.]

In the District Court of the United States for the District of Oregon.

MARY E. CRONEN,

Plaintiff,

v.

WALTER BAKER MOORE,

Defendant.

It is hereby stipulated and agreed by and between the parties to this action, through their respective attorneys, that all matters and things involved in said action have been fully settled and adjusted and the said action may be and the same is hereby dismissed upon the merits and judgment may be entered accordingly, but without costs or disbursements to either party.

JOHN F. LOGAN &
J. H. STEVENSON,
Attorneys for Plaintiff.

Dated February 24th, 1912.

A. E. CLARK,
Attorney for Defendant.

[Exhibit D.]

FOR AND IN CONSIDERATION of the sum of Six Thousand ($6,000.00) Dollars, in hand paid, the receipt whereof is hereby acknowledged, the undersigned, Mary E. Cronen, does hereby release, acknowledge satisfaction of, acquit and discharge Walter Baker Moore and his heirs, personal representatives and assigns, of all claims and demands whatso-

ever, for costs or damages, or otherwise arising out of, or in any wise connected with the cause of action set forth in a certain complaint wherein the undersigned is plaintiff and the said Walter Baker Moore is defendant, pending in the District Court of the United States for the District of Oregon.

And the undersigned does also release, discharge, acknowledge satisfaction of, and acquit the said Walter Baker Moore and his heirs and personal representatives of any and all claims and demands of whatsoever nature and however arising or accruing, or to arise or accrue, by reason of any matter, thing, or transaction whatsoever, from the beginning of the world until the present time.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 24th day of February, 1912.

MARY E. CRONEN. [Seal]

WITNESSES:

A. E. Clark.

J. H. Stevenson.

[Exhibit E.]

Feby. 24th 1912.

SECURITY SAVINGS & TRUST COMPANY,

City.

Gentlemen:—

There is this day deposited with you the following papers:

(1) Stipulation for the dismissal of the case of Mary E. Cronen vs. Walter Baker Moore, now pending in the District Court of the

United States for the District of Oregon.

(2) Release and discharge of Walter Baker Moore of all claims and demands of whatsoever nature signed by Mary E. Cronen.

(3) Statement signed by Walter Baker Moore, certifying among other things, of the high moral character of Miss Cronen.

Settlement of all matters and things between these parties has been agreed upon and the sum of Three Thousand Dollars has been paid. An additional Three Thousand Dollars is to be paid within 90 days from this date. Upon the payment of such sum to you to be paid to John H. Stephenson, Attorney, or to his order, you are to deliver to A. E. Clark, Attorney for Walter Baker Moore, the stipulation and the release above mentioned and you are to deliver to John H. Stephenson, Attorney for Miss Cronen, the statement above mentioned, signed by Walter Baker Moore.

In the event said sum of Three Thousand Dollars is not paid within the 90 days aforesaid, the escrow shall terminate and the said stipulation and the said release shall be delivered to John H. Stephenson, and the said statement to A. E. Clark.

Yours truly,

A. E. CLARK,
Atty. for Walter Baker Moore.
JOHN F. LOGAN and
J. H. STEVENSON,
Attys. for Mary E. Cronen.

[Endorsed]: Bill of Complaint. Filed July 17, 1912.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 5 day of August, 1912, there was duly filed in said Court, a Demurrer in words and figures as follows, to wit:

[Demurrer.]

In the District Court of the United States for the District of Oregon.

WALTER BAKER MOORE,
Complainant,

v.

MARY E. CRONEN and SECURITY SAVINGS AND TRUST COMPANY, a corporation,
Defendants.

Now comes the defendant, Mary E. Cronen, appearing for herself alone, and demurs to plaintiff's complaint for the reason that the complaint does not state facts sufficient to constitute a cause of complaint against this defendant, and because there is no equity in the complaint and because the court has no jurisdiction of the subject matter of the said suit and of the parties hereto.

OAK NOLAN,
Attorney for Defendant.

Due service of the foregoing demurrer is hereby acknowledged at Portland, Oregon, this 3rd day of August, 1912.

(Sd.) A. E. CLARK,
Atty. for Plff.

[Endorsed] Demurrer. Filed Aug. 5, 1912.
A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on Tuesday, the 6 day of August, 1912, the same being the 31 Judicial day of the Regular July 1912 Term of said Court; Present: the Honorable R. S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Order Overruling Demurrer.]

In the District Court of the United States, for the District of Oregon.

No. 5689.

August 6, 1912.

WALTER BAKER MOORE,

v.

MARY E. CRONAN and THE SECURITY SAVINGS & TRUST CO.

This cause came on regularly for hearing upon demurrer to bill of Complaint, A. E. Clark, Esq., appearing for complainant and Oak Nolan, Esq., for defendant; Whereupon after argument of counsel for respective parties demurrer ordered submitted and thereupon after consideration it is Ordered that said Demurrer to bill of Complaint be and the same hereby is overruled and it is further Ordered that defendant have and hereby is granted 10 days to answer herein.

And afterwards, to wit, on the 21 day of August, 1912, there was duly filed in said Court, an Answer in words and figures as follows, to wit:

[Answer.]

In the District Court of the United States for the District of Oregon.

WALTER BAKER MOORE,
Complainant,

vs.

MARY E. CRONEN, and THE SECURITY SAVINGS & TRUST COMPANY, a corporation,
Defendants.

Now comes Mary E. Cronen, one of the defendants above named, appearing for herself alone, and for answer to plaintiff's complaint herein, admits, denies and alleges as follows:

Admits that this defendant brought an action at law against the plaintiff for $100,000.00 as alleged in the complaint.

Admits that this defendant executed some instrument in writing which purports to release the plaintiff from all demands arising out of the said action at law.

Admits that plaintiff paid the defendant the sum of $3000.00 on or about the 24th day of February 1912.

Admits that this defendant served a notice upon the Security Savings & Trust Co., on or about the 4th day of April, 1912, to the effect that the alleged escrow should not be delivered.

This defendant denies each and every other allegation and each and every part, portion and provision of each and every other allegation made and contained in plaintiff's complaint which is not expressly admitted herein.

For a further answer herein to plaintiff's complaint this defendant alleges:

That prior to the 4th day of April 1912, John F. Logan and John H. Stevenson represented this defendant as her attorneys in that certain action at law which is now pending and at issue in the District Court of the United States for the District of Oregon, wherein Mary E. Cronen is plaintiff and Walter Baker Moore is defendant, and A. E. Clark appeared in the said action as the attorney of record for Walter Baker Moore. Some time prior to the 24th day of February 1912, the prospects of reaching a settlement of the said action had been talked over by the said attorneys and this defendant was duly advised of the same. It was understood and agreed that a settlement could be reached if Walter Baker Moore, Frank Allen Moore, Miles C. Moore and Margaret G. Moore would duly make, execute and deliver to this defendant, or cause the same to be delivered, a certain affidavit of vindication and retraction for the wrong which had been done to this defendant by the said parties, and acknowledge in the said affidavit that the said Walter Baker Moore had promised and agreed to marry this defendant as alleged by this defendant in the said action at law, and certify to the good moral character of this defendant and pay the sum of $6000.00. A. E. Clark thereupon promised and agreed to secure the said affidavit, the wording and form of which was then agreed upon. On the 24th day of February 1912 this defendant was called to the office of her said attorneys in the City of Port-

land, Oregon, and thereupon meet with the said Clark. A. E. Clark thereupon represented that he had secured the said affidavit, and thereupon demanded that this defendant execute a certain instrument in writing which he then produced. A. E. Clark represented to this defendant that the said instrument was intended to release the said Walter Baker Moore from any and all demands and liability to this defendant and that the same would not release any other person or persons from any liability to this defendant on any charges whatever. This defendant relied upon the said representations made by the said Clark and thereupon executed the said instrument. Plaintiff supposed and believed that the said representations were true, and would not have executed the said instrument if she had been truthfully advised as to the meaning of the said instrument, and this fact was well known to the said Clark. Said representations were false because the said instrument purports to release not only the said Moore, but also the heirs and representatives of the said Moore, from all liability to this defendant from the beginning of the world, and Frank Allen Moore, who is a brother of the said Walter Baker Moore, is now claiming to be released from liability to this defendant under and by the terms of the said instrument. A. E. Clark knew that the said representations were false and knew that the said instrument was drawn for the purpose of releasing other persons than the plaintiff from liability to this defendant, and knew that this defendant was being mislead to her damage in the execution

of the said instrument. It then developed that the said Clark had no affidavit executed by the said parties, but did have some statement executed by Walter Baker Moore alone, but the same was not verified. A. E. Clark expressed himself as being very anxious to arrive at some settlement because the said action at law was set for trial in the said Court within the next few days. It was then agreed that A. E. Clark should certify that the said instrument had been executed by the said Walter Baker Moore and should be delivered to this defendant. A. E. Clark then agreed that he would secure the required affidavits from Miles C. Moore, Frank Allen Moore and Margaret G. Moore and deliver the same to the defendant within the next day or two. The contents wording and form of the said affidavit to be executed by the said parties was then agreed upon. Thereupon the said Clark told this defendant that Miles C. Moore was on his way to China or to some other foreign country and for that reason it would be impossible to secure the affidavit from him within the next day or two, but that he would have the same on or before the expiration of 90 days and would deliver the same to the defendant by that time. It was then understood and agreed that the statement executed by the said Walter Baker Moore and the affidavits agreed upon and to be executed by Frank Allen Moore and Margaret G. Moore should be delivered to the defendant within the next day or two and should be recorded in the miscellaneous records of Multnomah County, Oregon, that the defendant might refer her friends to

the said records for a full and complete retraction and vindication from the wrong which had been done to the defendant by the said parties. It was also understood and agreed that a statement to the effect that a settlement had been reached by the said parties should be given to the newspapers for publication. It was further understood and agreed that $3000.00 should be paid in cash to the defendant, and that the remaining $3000.00 should be paid on or before the expiration of 90 days. That the instrument of release executed by the defendant should be deposited in escrow with the Security Savings & Trust Company to be delivered to the plaintiff upon payment of the said $3000.00. It was also expressly understood and agreed that in case A. E. Clark should fail to secure the affidavit which had been agreed upon, from Frank Allen Moore and Margaret G. Moore and deliver the same to the defendant within the next day or two, that the payment of $3000.00 in cash, should be forfeited to this defendant and that the release executed by her should be returned. It was understood and agreed that the said forfeiture should stand as a security to the defendant that the terms of the said contract would be carried out and that the said affidavits would be secured and delivered to the defendant within the next day or two. This defendant never had any other or different understanding or contract with the plaintiff in regard to the said matter. The statement executed by Walter Baker Moore has never been delivered to this defendant, and no affidavit of retraction or vindication executed by Miles C. Moore,

Frank Allen Moore or Margaret G. Moore as agreed upon or otherwise, has ever been made or delivered or offered to be delivered to this defendant. On the 4th day of April 1912, and after repeated demand for the said affidavits, this defendant notified the Security Savings & Trust Company that the instrument of release which had been executed by this defendant should not be delivered to the plaintiff. Plaintiff has never carried out the tearms of the said contract with this defendant and has never offered or tendered performance thereof. This defendant further alleges, that Miles C. Moore was not on his way to China or to any other foreign country on the 24th day of February 1912, but the said Moore was within reach where the affidavit from him might have been secured within a day or two. A. E. Clark knew that the said Moore was not on his way to China or to any other foreign country and knew that the said Moore was within reach where the said affidavit might have been secured within the next day or two. A. E. Clark made the said false statement in order that defendant should waive her demands for an affidavit from him to be delivered to her within the next day or two. Defendant would not have waived her demands for an affidavit from the said Miles C. Moore to be delivered within the next day or two if she had been truthfully advised as to the whereabouts of the said Moore, and this fact was well known to the said Clark. This defendant further alleges, that neither Miles C. Moore, Frank Allen Moore or Margaret G. Moore ever intended to make, execute or deliver the agreed affi-

davit or any affidavit of retraction or vindication in favor of the defendant, and this fact was well known to the said Clark. That A. E. Clark promised and agreed to secure the said affidavits from the said parties and agreed to deliver the same within the next day or two in order to secure the release executed by the defendant and intended thereby to defraud the defendant. This defendant relied upon the promise of the said Clark to secure and deliver the said affidavits within the next day or two, and supposed and believed that the same would be secured and delivered according to the said contract, otherwise defendant would not have executed the said release, and this fact was well known to the said Clark.

Now having fully answered plaintiff's complaint, defendant prays that a decree be made and entered in favor of this defendant, dismissing plaintiff's complaint and for costs of this suit.

.....

Defendant

OAK NOLAN,
Attorney for defendant.

[Endorsed]: Answer of Defendant Mary E. Cronen. Filed Aug. 21, 1912.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 23 day of August, 1912, there was duly filed in said Court, a Replication in words and figures as follows, to wit:

[Replication.]

In the District Court of the United States for the District of Oregon.

WALTER BAKER MOORE,

Plaintiff,

v.

MARY E. CRONEN and SECURITY SAVINGS & TRUST COMPANY, a corporation,

Defendants.

This replicant, saving and reserving to himself, all and all manner of exceptions or advantage which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Mary E. Cronen, for replication thereunto saith that he doth and will maintain and prove his said bill to be true, certain and sufficient in law to be answered unto by the said defendant and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant. And this replicant further replying, denies each and every allegation contained in said answer except wherein the same admit the allegations of the bill of complaint, all of which matters this replicant is ready to maintain and prove as this Honorable Court shall direct and humbly prays as in and by his said bill he hath already prayed.

A. E. CLARK & M. H. CLARK,
Solicitors for Replicant.

[Endorsed]: Replication to Answer of Mary E. Cronen. Filed Aug. 23, 1912.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 9 day of September, 1912, there was duly filed in said Court, a Decree in words and figures as follows, to wit:

[Decree.]

In the District Court of the United States for the District of Oregon.

WALTER BAKER MOORE,

Complainant,

vs.

MARY E. CRONEN, and the SECURITY SAVINGS & TRUST COMPANY, a corporation,

Defendants.

This cause came on to be heard upon the merits during the present term of this Court and upon the 4th day of September, 1912, upon the pleadings and proofs of the parties.

The complainant appeared by his solicitors, A. E. Clark and M. H. Clark. The defendant Mary E. Cronen appeared in person and by her solicitor Oak Nolan. It appeared that the Security Savings & Trust Company had been duly served in this cause with subpoena and certified copy of the bill of complaint in Portland, Oregon, on the 17th day of July, 1912, and that said defendant had not appeared, answered, or otherwise pleaded in the cause was in default.

And the Court having considered said cause and the proof therein and the arguments for counsel thereupon and upon consideration thereof, it is

ORDERED, ADJUDGED and DECREED, That the stipulation for the dismissal of the action at law

now pending in this Court wherein Mary E. Cronen is plaintiff and Walter Baker Moore is defendant, a true copy of which is attached to the bill of complaint in this cause as Exhibit "C" and brought into this Court upon the trial be delivered up to the complainant, or to his solicitor, A. E. Clark, for entering and filing therein in the said action at law and that the release, executed by the defendant Mary E. Cronen, of the complainant Walter Baker Moore brought into Court upon the trial of this cause by the defendant Security Savings & Trust Company and offered and received in evidence, a true copy of which is attached to the bill of complaint herein as Exhibit "D" be surrendered up and delivered into possession of the complainant, or his solicitor, A. E. Clark; that the defendant Security Savings & Trust Company bring into and deposit in the registry of this Court the sum of Three Thousand ($3,000.00) Dollars deposited and left with the said defendant by the complainant in this cause on or about the 6th day of May, 1912, and that said sum, after deducting therefrom the costs and disbursements of this cause taxed in favor of the complainant, be paid over to John H. Stevenson, attorney for Mary E. Cronen in the said action at law, or paid out upon his order and that the amount so deducted from said sum in payment of said costs and disbursements be paid over to complainant or to his solicitor, A. E. Clark, or to the order thereof. That a certain paper by way of certificate of the character of the defendant Mary E. Cronen signed by Walter Baker Moore brought into this Court upon

the trial thereof by the defendant Security Savings & Trust Company and which was referred to and identified as "Statement signed by Walter Baker Moore certifying among other things, of the high moral character of Miss Cronen" in instructions to the defendant Security Savings & Trust Company signed by A. E. Clark as attorney for Walter Baker Moore and by John F. Logan and John H. Stevenson, as attorneys for Miss Cronen, a copy of which instructions is attached to the bill of complaint as Exhibit "E" be delivered to the defendant Mary E. Cronen, or her order. And it is

FURTHER ORDERED, ADJUDGED and DECREED That the defendant Mary E. Cronen be, and is hereby perpetually enjoined and restrained from prosecuting further the action at law above referred to brought by her to recover damages as for a breach of promise of marriage against the complainant herein and now pending in this Court and from taking any further steps or proceedings whatsoever with respect thereto and that the stipulation for the dismissal of the said action at law be entered and filed in said cause and judgment of dismissal entered pursuant thereto. And it is

FURTHER ORDERED, ADJUDGED and DECREED, That the plaintiff have and recover from the defendant, Mary E. Cronen, his taxable costs and disbursements herein, to be paid out of the sum of the Three Thousand ($3000.00) Dollars required to be deposited in the registry of this Court by this decree,

said costs and disbursements being taxed and allowed at the sum of .....

..... Dollars.

R. S. BEAN,
Judge.

[Endorsed]: Decree. Filed Sept. 9, 1912.
A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 17 day of February, 1913, there was duly filed in said Court, a Transcript of Testimony in words and figures as follows, to wit:

[Transcript of Testimony.]

In the District Court of the United States for the District of Oregon.

Portland, Oregon, September 4, 1912.

WALTER BAKER MOORE,
Plaintiff,
vs.
MARY E. CRONEN,
Defendant.

A. E. CLARK, Attorney for Complainant.
OAK NOLAN, Attorney for defendant.

Before R. S. BEAN, District Judge.

JOHN H. STEVENSON, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

Questions by Mr. CLARK:

Mr. Stevenson, you live in this city?

A. Yes, sir.

Q. And what is your business or profession

A. Lawyer.

Q. Admitted to practice in the courts of Oregon?

A. Yes, sir.

Q. How long have you been engaged in that profession?

A. Since 1907.

Q. With whom, if any one, are you associated in the practice of your profession?

A. John F. Logan.

Q. And he is an attorney of this court and the courts of Oregon?

A. He is.

Q. How long have you been associated with him?

A. About four years. I believe.

Q. I believe that you and Mr. Logan were the attorneys for the defendant Mary E. Cronen in the action at law brought by her against Walter Baker Moore?

A. We were, yes, sir.

Q. To recover damages for a breach of promise?

A. Yes, sir.

Q. That was an action at law to recover damages in the sum of $100,000?

A. That is correct.

Q. And I believe that that action was removed from the Multnomah County Court to this court?

A. Yes, sir.

Q. And do you know who appeared as attorney of record for the defendant?

A. The defendant in it?

Q. Walter Baker Moore.

A. A. E. Clark.

Q. That is myself?

A. Yes, sir.

Q. Now, were you the attorney—you and Mr. Logan the attorneys for Miss Cronen in February, 1912?

A. We were, yes.

Q. And were you ever discharged from the case?

A. Well, I don't know. I think we were never formally discharged, never in substance—well, there may be—

Q. I think possibly there was—

A. I believe there was.

Q. Some proceedings had in July of this year?

A. We were, I believe, discharged from that.

Q. Some time in—well, in this summer?

A. In July, I believe, yes.

Q. Now, do you recall the circumstances of a settlement being arrived at in February, 1912?

A. Yes, sir, I was—I took part in it. I negotiated the settlement.

Q. And where were the papers relating to that settlement signed?

A. In Mr. Logan's and my office.

Q. And were some of those prepared in your office that day—during the course of the negotiations?

A. They were, yes.

Q. And who were present when the negotiations occurred, and when the papers were signed?

A. Yourself and Miss Cronen, Mr. Logan and myself.

Q. All in the same room?

A. Yes, sir.

Q. Who were there representing Miss Cronen?

A. Mr. Logan and myself.

Q. And I was in the midst of all you alone?

A. Yes, sir.

Mr. CLARK: Probably the orderly way would be to have shown that these papers were produced by the Security Savings and Trust Company, but I will show that shortly, your Honor.

Q. I call your attention to a paper under date of February 24, 1912, addressed to the Security Savings & Trust Company, and purporting to have been signed by myself as attorney for Walter Baker Moore, and by John H. Stevenson as attorney for Mary E. Cronen, and I will ask you whether or not you signed that paper?

A. I did, yes sir.

Q. And state whether or not that paper was signed in your office upon the 24th day of February?

A. It was.

Q. And in whose presence?

A. In the presence of Miss Cronen, yourself, Mr. Logan and myself.

Q. State whether or not Miss Cronen was fully advised by you and Mr. Logan of the contents of that paper?

A. As far as I know, she was.

Q. She was present during the entire negotia-

tions?

A. She was at that time.

Q. And you understood what the paper contained?

A. I did.

Q. And you were representing her as her attorney?

A. Yes, sir.

Mr. CLARK: I will offer in evidence this original paper. There is a copy attached to the complaint as Exhibit A.

Mr. NOLAN: We would like if they will introduce it. We have no objection to the introduction of it, as long as it is confined to the purposes of this case alone. I would like to have the court make that order, that they be for that purpose alone.

Mr. CLARK: We only offer it for the purpose of this case.

COURT: Only for evidence in this case.

Paper Marked "Plaintiff's Exhibit 1".

Mr. CLARK: I will introduce all these four papers. I will offer them and read them all together, as they constitute one series.

Q. I also call your attention, Mr. Stevenson, to what purports to be a stipulation for a dismissal of the law action referred to, and purporting to be signed by you and by myself representing the plaintiff and defendant.

A. It is such a stipulation, and I so signed.

Q. Signed by you, and by myself?

A. Yes.

Q. And when was that signed?

A. At the same time, the 24th of February, this year.

Q. And in the presence of Miss Cronen?

A. Same parties.

Q. Did you understand fully what you were doing when you signed the stipulation?

A. I think so.

Q. And do you know whether Mr. Logan also was fully cognizant of the contents and character of the stipulation?

A. As far as I am advised, he was.

Q. And state whether or not the matter of the stipulation and its force and effect was discussed in the presence of Miss Cronen?

A. I believe so.

Mr. CLARK: I offer the stipulation in evidence.

Marked "Plaintiff's Exhibit 2".

Q. I call your attention now to another paper purporting to be a release signed by Mary E. Cronen, witnessed by yourself and myself.

A. That is such a release, and is signed by yourself and myself.

Q. As witnesses?

A. As witnesses.

Q. And by Mary E. Cronen?

A. Yes, sir.

Q. Where was that instrument signed?

A. In my office on the 24th of February, 1912.

Q. State whether or not this instrument was read to, or read by Miss Cronen, before she signed it?

A. Yes.

Q. Do you remember any incident in connection with the language used in this release, which calls to your mind the fact that it was fully discussed at the time?

A. The only thing I recall now is the discussion of the breadth and scope of the release, as to whether or not it had the effect of discharging Walter Baker Moore, and his heirs alone, or whether it also had the effect of discharging his family—relations.

Q. And that was a discussion that arose in the presence of Miss Cronen?

A. Yes.

Q. And before the release was signed?

A. Yes.

Q. And it was the subject of discussion, was it not, between Mr. Logan and yourself, and Miss Cronen and myself?

A. It was.

Q. With respect to the scope of the release?

A. Yes, sir.

Q. After which the release was signed?

A. That is correct.

Mr. CLARK: We offer in evidence the release.

Marked "Plaintiff's Exhibit 3".

Q. I show you another paper, and ask you whether or not that was produced at the time of the settlement, and made a part of the papers that were to be deposited in escrow?

A. It was.

Q. Do you remember by whom it was produced?

A. By you.

Q. Do you remember whether or not we had taken two or three weeks to get that in just the form that would be satisfactory to Miss Cronen?

A. Some considerable time, I recall.

Q. And do you recall the form which you finally sent over was the form that was finally adopted and signed?

A. I believe this is substantially, if not exactly, the form that I sent over.

Mr. CLARK: The paper last referred to by the witness is offered in evidence.

Marked "Plaintiff's Exhibit 4".

Q. I note on this paper, following the signature of Walter Baker Moore, is this "I hereby certify that the above signature is that of Walter Baker Moore", dated February 24, 1912, and signed by me. Do you remember how, in the course of the negotiations there, I came to put that certificate on?

A. I think there was a request.

Q. Do you remember who made the request?

A. I believe Miss Cronen mentioned it, and I believe I asked you to certify it. You certified—verified the signature.

Q. In other words, you were taking—in the course of that settlement, you weren't taking chances as to whether or not that was Walter Baker Moore's signature?

A. I think we wanted it verified.

Q. And you were extremely careful, were you not, in all the details of the negotiation?

A. We tried to be.

Mr. CLARK: I will read these papers to your Honor now, so as to get the sequence.

"Portland, Ore, Feb. 24th, 1912.

Security Savings and Trust Company,

City.

Gentlemen:

There is this day deposited with you the following papers:

(1) Stipulation for dismissal of the case of Mary E. Cronen v. Walter Baker Moore, now pending in the District Court of the United States for the District of Oregon.

(2) Release and discharge of Walter Baker Moore of all claims and demands of whatsoever nature, signed by Mary E. Cronen.

(3) Statement signed by Walter Baker Moore, certifying, among other things, of the high moral character of Miss Cronen.

Settlement of all matters and things between these parties has been agreed upon, and the sum of Three Thousand Dollars has been paid. An additional Three Thousand Dollars is to be paid within ninety days from this date. Upon the payment of such sum to you, to be paid to John H. Stevenson, Attorney, or to his order, you are to deliver to A. E. Clark, Attorney for Walter Baker Moore, the stipulation and the release above mentioned, and you are to deliver to John H. Stevenson, attorney for Miss Cronen, the statement above mentioned, signed by Walter Baker Moore.

In the event said sum of Three Thousand Dollars is not paid within the ninety days aforesaid, the escrow shall terminate, and the said stipulation and the said release shall be delivered to John H. Stevenson, and the said statement to A. E. Clark.

Yours truly,

A. E. Clark,
Atty. for Walter Baker Moore.
John H. Stevenson,
Atty. for Mary E. Cronen."

Plaintiff's Exhibit 2.

"In the District Court of the United States for the District of Oregon.

MARY E. CRONEN,
Plaintiff,

vs.

WALTER BAKER MOORE,
Defendant.

It is hereby stipulated and agreed by and between the parties to this action, through their respective attorneys, that all matters and things involved in said action have been fully settled and adjusted, and the said action may be, and the same is hereby dismissed upon the merits, and judgment may be entered accordingly, but without costs or disbursements to either party.

John H. Stevenson,
Attorney for Plaintiff.

Dated February 24, 1912.

A. E. Clark,
Attorney for Defendant."

Plaintiff's Exhibit 3.

"For and in consideration of the sum of Six Thousand Dollars ($6,000), in hand paid, the receipt whereof is hereby ackuowledged, the undersigned Mary E. Cronen does hereby release, acknowledge satisfaction of, and acquit and discharge Walter Baker Moore, and his heirs, personal representatives and assigns of all claims and demands whatsoever, for causes of damages or otherwise arising out of, or in anyways connected with the cause of action set forth in a certain complaint, wherein the undersigned is plaintiff, and the said Walter Baker Moore is defendant, pending in the District Court of the United States for the District of Oregon.

And the undersigned does also release, discharge, acknowledge satisfaction of, and acquit the said Walter Baker Moore, and his heirs and personal representatives of any and all claims and demands of whatsoever nature and however arising or accruing, or to arise or accrue by reason of any matter, thing, or transaction whatsoever, from the beginning of the world until the present time.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 24th day of February, 1912.

Mary E. Cronen. [Seal.]

Witnesses:

A. E. Clark.

John H. Stevenson."

Q. There isn't any question about that being Mary E. Cronen, is there?

A. I think not.

Q. Didn't she sign in your presence on that day?

A. It is. I witnessed it.

Q. You witnessed it.

Mr. CLARK: The next paper is entitled

In the Circuit Court of the United States for the District of Oregon.

MARY E. CRONEN,

Plaintiff,

vs.

WALTER BAKER MOORE,

Defendant.

WHEREAS, there is now pending in the above entitled court an action by Mary E. Cronen against the undersigned, to recover damages for breach of a marriage contract, and,

WHEREAS, the measure of damages in said action has been determined and adjusted, Therefore, this declaration is by me made voluntarily:

That at one time an engagement of marriage existed between us, and the same was broken by me for reasons wholly personal to myself, and for causes in no wise imputing fault or unworthiness to Miss Cronen. That Miss Cronen is a woman of high and unimpeachable moral character, and of my own knowledge I am prepared to say that any statements or intimations to the contrary are unfounded and untrue.

Walter Baker Moore.

I certify that the above signature is that of Walter Baker Moore.

A. E. Clark.

Dated February 24, 1912."

Q. I will ask you if this is the stipulation?

A. It is.

Q. Plaintiff's Exhibit 2 is the stipulation referred to in these instructions to the escrow?

A. It is.

Q. "Release and discharge Walter Baker Moore of all claims, and demands of whatsoever nature, signed by Mary E. Cronen." I will ask you if Exhibit 3 is the release referred to in these instructions?

A. It is.

Q. "Statement signed by Walter Baker Moore, certifying among other things of the high moral character of Miss Cronen." I will ask you whether or not Exhibit 4 is the statement referred to in the instructions?

A. It is.

Q. Now, Mr. Stevenson, after these papers had been agreed upon and signed, what was done with them that day?

A. They were left with me until the following day.

Q. What for?

A. Until you could make arrangements to deposit the money in escrow, to pay over the—

Q. First three thousand dollars?

A. (Continuing) First three thousand dollars.

Q. I didn't have the $3,000 with me at that time. Do you remember how I happened to go over to your office that day in connection with this matter?

A. I think I asked you to come over, as I recall now.

Q. The amount of the settlement had been a subject of considerable negotiation, had it not?

A. Yes.

Q. For a long time. Is it not a fact that your office insisted on having a minimum of $7500?

A. Why, I don't recall the minimum.

Q. You started with something considerably bigger than that, some thirty or forty thousand, but you eventually got down to what you declared to be an irreducible minimum of $7500. Do you recall that?

A. I don't recall the irreducible minimum, or we would probably have adhered to it.

Q. Well, I understand; but reduced to a minimum, and I got up to $5,000, and there we hung until in February, 1912. Do you remember that?

A. I don't recall, Mr. Clark, the exact time when we reached the $6,000 stage, but it was some little time before the papers were signed.

Q. More than two or three weeks?

A. Well, it was probably two or three weeks.

Q. Probably two or three weeks?

A. Somewhere along there.

Q. Then the question arose as to the form of this retraction of Walter Baker Moore?

A. Yes.

Q. And I drew that, and you sent it back to me with these lead pencil notations, and was finally signed in the exact form as corrected by you.

A. That is not the form that was finally adopted.

Q. That is the form that was finally signed?

A. No.

Q. Isn't it?

A. No.

Q. Are those your lead pencil corrections?

A. These are, yes, but this is not the form that was finally signed. For instance, the matter here referring to the measure of damages, if I recall, is not in the certificate as signed, and the matter referring to the above entitled court.

Q. Now, let's read them, and see if the one you sent back to me as corrected, isn't the one as finally signed: "Whereas, as there is now pending in the above entitled court, an action by Mary E. Cronen, against the undersigned to recover damages for breach of a marriage contract, and whereas, the measure of damages in said action has been determined and adjusted—"

A. I guess you are right.

Q. (Continuing) "Therefore, this declaration is by me made voluntarily." As a matter of fact, Mr. Stevenson, I took the form you sent, and took it down and had it signed.

A. I know, but I had forgotten that was the form.

Q. You remember a good deal of discussion between you and your client, and you and me as to the form?

A. Yes, a great deal.

Q. And I finally adopted with great reluctance the form you and your client agreed upon?

A. I remember, but I had forgotten that was the form. I see now it is.

Q. When these papers were all signed, including

this certificate of Mr. Moore, I left them all with you?

A. Yes, sir.

Q. Until such time as the $3,000 was paid—the first $3,000?

A. Yes, sir.

Q. Do you remember why they were left with you that day?

A. Well, I presume they were left with me until such time as you could pay the initial $3,000.

Q. Yes, but my paper and yours were all left in your custody?

A. Yes, all.

Q. Do you remember Miss Cronen saying she rather have all the papers remain with her attorney until the $3,000 was paid?

A. I don't recall that.

Q. Anyway, they were left there?

A. They were left there, that is true.

Q. A day or two later, do you recall my telephoning you to meet me at the Security Savings and Trust, and I would pay the $3,000?

A. The next day.

Q. The next day, and to bring the papers with you?

A. Yes, sir.

Q. What papers did you bring with you?

A. All the papers that are in escrow.

Q. State whether or not there was at that time deposited in escrow with the Security Savings and Trust Company the papers introduced in evidence.

A. They were deposited.

Q. You were there at the time?

A. Yes, sir.

Q. Did I pay you for Miss Cronen the sum of $3,000 on that day?

A. Yes, sir.

Q. And that was taken and received, and accounted for to Miss Cronen?

A. Yes, sir.

Q. And that has been kept, has it not, as far as you know?

A. As far as I know anything about.

Q. As far as you know, no part of it has ever been returned, or offered to have been returned?

A. Not as far as I know.

Q. It was paid over to, and accounted for, to Miss Cronen?

A. It was.

Q. Now, I will ask you again if, as far as you are concerned, you had a full and complete understanding of the contents and nature of the papers which were signed upon the day of the settlement?

A. I did have.

Q. And understood exactly what was going on?

A. Yes, sir.

Q. And state whether or not during the entire discussion of the case, and in the discussion of all these papers, Miss Cronen was present in the room?

A. She was.

Q. And state whether or not Mr. Logan, your associate, was present a good share of the time, and par-

ticipated in the discussion and in the council with respect to the character of these papers?

A. I was all the time; Mr. Logan was there the greater part of the time.

Q. Were you advised that Miss Cronen had served upon the Security Savings and Trust Company, about April 4th, of this year, a notice stating that she would not be longer bound by the escrow agreement?

A. I heard it, yes, sir. I heard it, I think, from you, and I think Miss Cronen also told me.

Q. Were you advised of the fact before the notice was served?

A. No, I was not.

Q. Do you know who prepared the notice?

A. I do not.

Q. Your office did not?

A. It did not.

Q. Did your office advise that the notice should be given?

A. No. I did not. I don't think Mr. Logan did.

Q. You never heard?

A. No.

Q. Was your office advised, or were you, as Miss Cronen's attorney advised, before the expiration of the 90 days fixed in the escrow agreement, that the additional sum of $3,000 had been paid into the bank?

A. Yes, I believe you advised me that you had paid it, or were ready to pay it. I think you told me you had paid it.

Q. Yes.

A. Or were going to pay it. I don't remember

you told me you had paid it. I know you told me you were prepared to pay it at some stage, I think within 90 days.

Q. You remember I phoned you, and sent you written notice?

A. Yes.

Q. And that written notice advised I had actually paid it in about the 8th of May?

A. Yes, I recall it now. You did send the notice.

Q. And requested that the settlement be carried out by the delivery of the papers to the respective parties?

A. Yes, sir.

Q. And why was that not done? I requested you, did I not, to authorize the Security Savings and Trust Company, in behalf of Miss Cronen, to release or to deliver the papers that were coming to us?

A. Yes, sir, you did.

Q. And why was not that done?

A. Miss Cronen objected to it.

Q. You consulted with her, and—

A. Yes.

Q. (Continuing) Requested her to accede to that.

A. We advised with her as to the expediency of it several times.

Q. At the same time that these papers were signed—this, perhaps, has not a direct bearing upon the case, your Honor, except that it is raised in their answer—there were some papers signed with respect to Frank A. Moore at the same time, and inasmuch as

some question, or it is suggested in their answer in the suit in equity of a similar nature, brought by Frank, and also in this case, that one of the wrongs we perpetrated upon Miss Cronen at this time was to induce her to sign a release which purports to release Walter, or which she understood only released Walter, but by adding the words "heirs, representatives and assigns," that we now claim it also releases Frank, and everybody else connected with the Moore family. They allege that affirmatively, as well as the wrongs that Mr. Logan, Mr. Stevenson and myself perpetrated.

Q. Were there some other papers signed at that time, Mr. Stevenson?

A. There were, yes, sir.

Q. I show you a paper purporting to be signed by you as attorney for Mary E. Cronen and myself, as attorney for Walter Baker Moore.

A. Yes, sir, that is the stipulation.

Q. Was that signed by you?

A. Signed at the same time by myself and yourself.

Q. And then the next paper attached to it is what purports to be a release signed by Mary E. Cronen?

A. Yes, sir.

Q. And was that signed by her at that time?

A. It was, yes, sir.

Q. Where were those papers prepared?

A. They were prepared in our office.

Q. Do you remember where they were dictated?

A. In my room, I believe.

Q. And while Miss Cronen was seated by the table?

A. Yes, she was present.

Q. And you were seated on one side of the table?

A. Yes.

Q. Dictated to the stenographer in your office?

A. Yes, sir.

Q. And dictated after the scope and character of the papers had been discussed?

A. Yes, sir; yes, sir.

Mr. CLARK: I offer these papers in evidence. Copies of these papers, Mr. Nolan, are attached to the answer and complaint. I offer in evidence the stipulation referred to, signed by Mr. Stevenson and Myself, and the release signed by Mary E. Cronen.

Stipulation marked "Plaintiff's Exhibit 5".

Release marked "Plaintiff's Exhibit 6".

Stipulation read as follows:

"It is hereby stipulated and agreed as follows:

That a release and acquittance, a duplicate original of which is hereto attached, and signed by Miss Mary E. Cronen is deposited in escrow with the Security Savings & Trust Company, of Portland, Oregon. Upon the delivery to the said Security Savings & Trust Company of a written statement signed by Frank Allan Moore and Margaret Gleason Moore, in the following form, for delivery to John H. Stevenson or John F. Logan, attorneys for Miss Mary E. Cronen, or their order, the said release aforesaid, shall be released from the escrow and delivered to A. E. Clark, or his order; said statement to be signed

to be in this form:

> "We, the undersigned, have known Miss Mary E. Cronen well and intimately for many years, and to our own knowledge she is a gentlewoman of a high standard of moral character."

The said instrument is to be dated and witnessed when signed.

There is deposited at this time in escrow a stipulation, release and a statement signed by Walter Baker Moore to be delivered to respective parties in accordance with instructions to the Security Savings & Trust Company, upon the payment of the sum of Three Thousand ($3,000.00) Dollars.

The release herein referred to is to be delivered to A. E. Clark, and the written statement aforesaid to the aforesaid attorneys for Mary E. Cronen when said sum of $3,000 is paid, and upon failure to make such payment as provided for in the instructions to the escrow agent, the release is to be surrendered to said attorneys for Mary E. Cronen, and the statement to the said A. E. Clark.

Dated at Portland, Oregon, this 24th day of February, 1912.

John H. Stevenson
of Attorneys for Mary E. Cronen.
A. E. Clark,
Attorneys for Walter Baker Moore.

Mr. CLARK: The Court will observe that the statement which was to be signed by Frank Allan Moore and Margaret Gleason Moore was not depos-

ited in escrow at that time, but it says "upon the delivery to the said Security Savings and Trust Company", I was to prepare that letter and all the papers were to be delivered together.

This is the release:

"For and in consideration of the sum of $1.00 and other valuable consideration in hand this day paid, the receipt whereof is hereby acknowledged, the undersigned does hereby release, acquit and acknowledge satisfaction of all claims and demands of whatsoever nature however arising, which she may have against Frank Allan Moore, Margaret Gleason Moore and Miles C. Moore, or either of them, from the beginning of the world up to the present time.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal on this the 24th day of February, A. D. 1912.

Mary E. Cronen [SEAL]"

Q. Both of these papers, I understand, were prepared that day, during the course of the discussion in your office, and by your stenographer?

A. Yes, sir.

Q. And signed at the same time?

A. Yes, sir.

Q. Now, do you remember how the discussion of getting the so-called retraction from Frank Moore and his wife came up?

A. I think it was brought up by Miss Cronen.

Q. That day?

A. Yes.

Q. We had never discussed that between us be-

fore, had we?

A. Yes, it had been discussed.

Q. I mean with me.

A. I think I had mentioned it to you.

Q. Well, did you ever—you remember the forms that you had submitted from time to time.

A. I don't think that—the forms which I had always submitted at Miss Cronen's instance, was a form in which it was stated that the engagement between Miss Cronen and Walter Baker Moore had been broken off by reasons personal to himself and his family, and the phrase "my family" was objected to, as I understand, by Miss Cronen. That was the reason that that did not go into this, but Miss Cronen was always very insistent that there should be some certificate from the family. How clearly you understood that, I am not prepared to say.

Q. But I mean the form you had prepared and submitted to me from time to time related solely to Walter Baker Moore?

A. Except the words "my family".

Q. I mean the certificate to be signed by Walter Baker Moore.

A. Yes, I had submitted to you, I think, no certificate applying to heirs or family.

Q. And the certificate I produced that day, when you invited me over to a settlement, was a certificate you had prepared in regard to Walter Baker Moore.

A. That is correct.

Q. And when we got there, Miss Cronen suggested a certificate from some other members of the fam-

ily. Do you recall I said, "Very well, if you want that, you will have to sign a release of those people"?

A. Yes.

Q. And it was upon that understanding that this stipulation was drawn up, and she signed the release which was to go in escrow with the bank, and I was to procure from Frank Moore and his wife a certificate in the form which is set forth in this stipulation?

A. That is correct.

Q. Now, do you recall who got up the wording of the form in that certificate?

A. No, I don't accurately.

Q. It was gotten up that day, was it?

A. It was gotten up among us, I presume. I think you dictated the form, Mr. Clark, to the stenographer.

Q. Now, just to refresh your memory: Don't you remember that somebody suggested the use of the words "gentle woman of a high standard of moral character"?

A. Miss Cronen wanted that.

Q. Miss Cronen wanted that phraseology?

A. She wanted the use of the word "gentlewoman".

Q. And it was put in at her request?

A. It was. It was put in, undoubtedly, at her request.

Q. And do you remember that Mr. Logan, with his usual desire for accuracy, went and looked that up to see what it meant, or at least got a book and told us exactly the meaning of that word "gentlewoman"?

A. I don't recall.

Q. And the meaning of the phrase met with the approval of the assembly, and we put it in?

A. Yes, were all satisfied.

Q. Anyway, the particular wording of this certificate was approved by Miss Cronen?

A. It was approved.

Q. And a part of it was selected by her?

A. That is true.

Q. And when that was all done, the papers were signed, or you signed. Did you understand, Mr. Stevenson, what you were doing, and the contents of this paper when you signed it?

A. I did.

Q. And was it signed in the presence of Miss Cronen?

A. It was.

Q. Was she advised of its contents?

A. She was.

Q. And did you know what this release was before it was signed?

A. I did.

Q. Was it not dictated to your stenographer in the presence and hearing of Miss Cronen?

A. It was.

Q. And did she know—do you know whether she knew the character of it?

A. Oh, I think she did.

Q. How old a woman—is Miss Cronen a mature woman?

A. Yes.

Q. What has been her business or profession in life?

A. Professional nurse.

Q. For how many years, do you know?

A. I do not.

Q. And she is a keen, bright, shrewd woman, is she not?

A. She is. She is a bright woman.

Q. From your professional relations in this case, are you prepared to say she usually understands exactly what she is about?

A. I think so.

Q. Now, was this stipulation and this release deposited in escrow at the same time as the other papers?

A. It was.

Cross Examination.

Questions by Mr. NOLAN:

Mr. Stevenson, what time of day was it that Miss Cronen came to your office on the 24th of February?

A. The first time that day?

Q. Yes.

A. I don't—if the first time she came that day was when this case was adjusted, it was some time in the afternoon; whether she was there earlier that day, I do not know; don't recall. She may have been there in the morning, I don't know; don't remember now.

Q. Is that the time that she met with you and Mr. Logan and Mr. Clark to prepare these papers?

A. Pardon?

Q. Is that the time she met with you to prepare these papers?

A. Yes, sir.

Q. All these transactions took place at that time, at that one meeting?

A. As far as the preparing was concerned, yes.

Q. As far as the drawing of the papers, and the execution of them, it was all done at one sitting?

A. Yes, sir.

Q. And how long did that take?

A. Why, I should say an hour and a half, probably.

Q. Now, which of these particular exhibits were prepared at that time?

A. Well, all of the papers relating to Frank Allen and Margaret Gleason Moore were prepared at that time.

Q. That is the stipulation in regard to the Frank Moore—

A. Yes.

Q. (Continuing) Vindication, and the release from Mary E. Cronen. Is that mentioned in there?

A. You mean the last that I have reference to?

Q. Yes.

A. Yes, they were prepared at that time.

Q. And also one from Miles C. Moore?

A. No, there were none from Miles C. Moore.

Q. That wasn't prepared at that time. There was none prepared for him to sign at that time?

A. No, there was not, no, sir.

Q. Where was this—was this stipulation that you

entered into for the Walter Baker Moore case prepared at that time?

A. No; that was brought to the office by Mr. Clark.

Q. Was prepared by Mr. Clark?

A. Prepared by Mr. Clark and brought to the office.

Q. When was that prepared?

A. I don't know. I presume Mr. Clark—

Q. Was it before or after this meeting in the office?

A. It was before.

Q. It was before?

A. Yes, sir.

Q. Now, that is the stipulation which you entered into for the dismissal of the case?

A. Yes.

Q. Mr. Clark brought it with him that day, did he?

A. Yes, sir; that is my best recollection.

Q. When was this escrow agreement to the bank prepared?

A. He brought that with him also.

Q. That was brought with him, and what other papers did he bring with him?

A. He brought with him the release of Miss Cronen, release of Walter Baker Moore.

Q. And the escrow agreement?

A. And the escrow agreement.

Q. Are those the only two papers he brought?

A. Well, he brought the escrow agreement, the

release—

Q. And the stipulation?

A. (Continuing) And the stipulation.

Q. Mr. Clark had those prepared when he came over that day?

A. Yes, sir.

Q. Then the only papers prepared in your office at that time were the releases to be signed by Frank Allan Moore and his wife?

A. Yes, the stipulation.

Q. And the agreement, or release signed by Mary E. Cronen—where was that prepared?

A. You mean of Frank Allan and Margaret Gleason Moore?

Q. No. The release which Miss Cronen executed. Where was that prepared?

A. To Frank Allan Moore and his wife?

Q. No.

A. You mean the release of Walter Baker Moore?

Q. Yes.

A. That was prepared by Mr. Clark.

Q. That was prepared by Mr. Clark?

A. And brought to the office, yes, sir.

Q. When was the form of that agreed upon?

A. Well, the form was finally agreed upon at the meeting that day, in Mr. Logan and my office.

Q. But prior to that time—well, who prepared that release? Did you prepare it?

A. No, Mr. Clark, I assume did. He brought it with him.

Q. In your talk to that time, it was to be an affi-

davit, was it not?

A. Beg pardon?

Q. In your talk to that time, it was to be an affidavit, was it not?

A. Or release.

Q. Yes; in the form of an affidavit?

A. No.

Q. What was the reason of putting that endorsement on the bottom of it?

A. Are you talking—I am talking about the release, and you are talking about the certificate of good character, I think.

Q. Let's get back to the release. I am talking now about the release of Walter Baker Moore, the one he executed.

A. That was not a release, but a certificate of good character. That is what you have reference to?

Q. Yes.

A. I misunderstood what you referred to.

Q. It was agreed to be in the form of an affidavit, wasn't it, before this?

A. Well, I never understood it was to be an affidavit. We always referred to it in our negotiations as a declaration; declaration of Miss Cronen's good character. That is the way I styled it in speaking of it to Mr. Clark, a declaration of good character.

Q. How long had you been negotiating for the execution of that?

A. Oh, some considerable time. I wouldn't undertake to say. Three or four weeks, probably longer than that.

Q. Had you submitted forms to Mr. Clark for Mr. Moore to execute?

A. Yes, sir.

Q. And Mr. Clark had submitted forms to you?

A. Yes, submitted some to me.

Q. When did you first see the one that was finally executed?

A. The first time I—I think the first time I saw it was when Mr. Clark brought it to the office. I don't recall I ever saw it before.

Q. Miss Cronen had never seen it?

A. She had never seen it until that day, to my knowledge.

Q. And that endorsement was put on because of the objections she made to the form of it, was it not?

A. Well, if I recall now, I think Miss Cronen wanted some verification of the signature; some evidence, some additional proof that that was Mr. Moore's signature. Mr. Clark said he was familiar with it, and he would certify to it being his signature, and did so.

Q. Well, were all these papers prepared, that is, all the papers prepared and gone over before they were any of them executed, or were they prepared one at a time, piece-meal?

A. Well, I think they were all prepared, or all dictated, and the stenographer wrote them out, and brought them in, and we examined them and signed them, is my recollection.

Q. And what part did Miss Cronen take in that proceeding?

A. She consulted and advised with us.

Q. Did you read the papers aloud to her, or did she read them herself?

A. Well, I think—I believe I read the release aloud, if my memory serves me correctly.

Q. Which release?

A. The release she executed to Walter Moore. I know we discussed that, and I think Miss Cronen examined some of the papers.

Q. How about the one to Frank Moore?

A. Well, I don't remember now. I think, though, if I remember, Mr. Clark dictated to the stenographer in the room at the time. Whether she ever examined after that, or whether it was read again to her or not, I do not know.

Q. What did Miss Cronen do immediately after she executed these papers?

A. You mean that day?

Q. Yes. Did you all separate then?

A. I think so. I believe so.

Q. Now, what particular papers were left in your care at that time?

A. All the papers.

Q. All of them?

A. I think all of them; that is all the originals. Those intended for the escrow, I know were left with me. I think probably Mr. Clark took with him some copies. I am not clear whether he did or not. Maybe I supplied them the next day.

Q. You don't remember distinctly just what papers were left with you at that time?

A. My best recollection is, they were all left with me. It may be Mr. Clark took with him copies like copies of the stipulation, and copies of the escrow agreement. He may have taken those with him.

Q. Did he leave the release, or the certificate executed by Walter Baker Moore in your possession at that time?

A. Yes, sir.

Q. And also the statement executed by Miss Cronen?

A. Yes, they were left with me. All of the originals that went into the escrow were left with me.

Q. When was it you finally agreed to accept $6,000 in place of the $7500?

A. Well, that was some time before these papers were signed. I wouldn't undertake to say. The negotiations extended over quite a long period, several months from the time Mr. Clark came into the case, and I wouldn't be sure when we finally agreed upon that sum. It was some time, though.

Q. This was on the 24th day of February, in the afternoon, that you all met in your office, as I understand?

A. Yes, that is correct.

Q. How long did you keep these papers that were left with you?

A. Until the next morning.

Q. What time?

A. The next day at noon; I think at noon. I believe it was noon, or anyhow not the forenoon. Mr. Clark phoned me that he had the money, and for me

to meet him at the bank. I went to the bank and met him.

Q. And then you went over to the bank and deposited with Mr. Clark?

A. No, deposited with Major Jubitz of the Security Savings and Trust Company.

Q. How, does it come, Mr. Stevenson, that nothing was mentioned in that escrow agreement in regard to the release which she executed in favor of Frank Moore?

A. What agreement do you mean?

Q. The release which she executed in favor of Frank Moore? How does it come that was not mentioned in your escrow contract?

A. Well, you see, we made practically two escrows. One embraced all the papers having application to the Walter Baker Moore case under one escrow direction or stipulation, and then the papers referring to Frank Allan Moore and Margaret Gleason Moore are mentioned in the stipulation respecting those two parties, and they were all put in together, but in the stipulation as to Walter Baker Moore, there is no mention of the other Moores at all. But they are mentioned—the other Moores are mentioned in the stipulation. There were two stipulations.

Mr. CLARK: You mean two instructions to escrow?

A. Yes.

Q. Did you have two escrow agreements with the bank, as I understand you?

A. Yes, that is correct.

Q. There was only one produced here?

A. No.

COURT: There have been two produced.

Mr. CLARK: The one I handed you over there is the second one.

A. The one you examined last, Mr. Nolan, is the second escrow agreement.

Mr. CLARK: Here is the second one.

Mr. NOLAN: But to the bank.

Mr. CLARK: That was deposited with the bank, with instructions to escrow.

Mr. NOLAN: The escrow agreement, and the only one I see, is addressed to the Security Savings and Trust Company, and it states "There is this day deposited with you the following papers: (1) Stipulation for dismissal of the case of Mary E. Cronen, vs. Walter Baker Moore, now pending in the United States Court for the District of Oregon; (2) Release and discharge of Walter Baker Moore of all claims and demands of whatsoever nature signed by Mary E. Cronen; (3) Statement signed by Walter Baker Moore, certifying, among other things of the high moral character of Miss Cronen."

Mr. CLARK: If you will read the paper just underneath that, you will see the other stipulation.

Mr. NOLAN: Yes, but this one is addressed to the bank. Was this addressed to the bank also?

Mr. CLARK: It was delivered to Mr. Jubitz, with instructions.

A. It went in, Mr. Nolan, with the other papers.

Q. It is not mentioned anywhere in the instruc-

tions to the bank?

A. No, it was not mentioned in the general letter of instructions on the Walter Baker Moore case. It is not mentioned. That was agreed upon afterwards. That is, the form of it was agreed to later.

Q. Now, something was said at the time of this meeting in regard to a statement to be signed by Miles C. Moore, wasn't there?

A. Yes, that subject came up.

Q. Was something prepared in connection with that?

A. No, nothing prepared. Miss Cronen, as I recall it, wanted a statement of a like nature from Miles C. Moore, and Mr. Clark said that Miles C. Moore was about to leave for China, and that he couldn't get into communication with him; couldn't get him to sign. And Miss Cronen waived the stipulation at that time as to Miles C. Moore.

Q. When was that to be executed?

A. Which? You mean the statements of the other Moores?

Q. By Miles C. Moore.

A. Well, it was not to be executed at all by Miles C. Moore; only as to the other two Moores, Frank Allan and Margaret Gleason Moore.

Q. Now, at the time you separated, Mr. Clark took with him the blank statements which were to be executed by Frank Allan Moore and Margaret Gleason Moore, did he not?

A. No, they were not—those statements were not prepared in the office, but the form is prepared in the

agreement which you just had.

Q. He prepared these some other time?

A. I presume he prepared these later, yes.

Q. Now, when were those to be delivered?

A. Well, there seems to be a difference of opinion about that. Miss Cronen evidently had the opinion they were to be delivered at once.

Q. What was said about it?

A. Well, the only conversation I can recall now was this: I think Miss Cronen asked Mr. Clark how soon he could have back here the statements by Frank Allan and Margaret Gleason Moore, and I don't pretend to remember the dialogue, but what I gained from it was merely a matter of sending up there for the statements.

Q. Up where?

A. Up to Walla Walla. And that they would come right back. That is, the understanding I gained from it was, there would be no difficulty involved, or no delay, in getting these statements here, getting them signed, but whether there was any exact agreement between us as to just when they would be delivered here, my memory isn't clear.

Q. Then Miss Cronen had no knowledge as to what was to be in these statements, as I understand?

A. Oh, yes, they were agreed upon in the stipulation.

COURT: I understand the statement is set out in this stipulation—the form of it.

Q. And you are quite sure Miss Cronen went over very carefully the two releases which she signed?

A. Well, I don't know. You mean the two releases?

Q. Yes.

A. Yes. The release to Walter Baker Moore she read over, or I read to her, I don't recall which. The other release was dictated in her presence.

Q. What construction was placed upon that release to Walter Baker Moore, as to whom it should release?

A. I recall Miss Cronen was fearful that the scope was too large, that it would probably release the other members of the family.

Q. What did Mr. Clark say as to that?

A. Mr. Clark took the same view we did. It would merely release Mr. Moore and his immediate descendants, his heirs and representatives in the descending line.

Mr. CLARK: We don't claim anything else now.

Q. Miss Cronen made some serious objection to the execution of it, did she not, on account of the form of it, outside of what you have spoken of?

A. I don't recall it now, Mr. Nolan. That objection—any objection as to form. The objection went more as to substance.

Q. As to the wording of the release. She made serious objection or made serious objection that it didn't specify anything about a vindication?

A. She may have objected to that. I don't recall at this moment. Possibly she did. I believe if any objection was there, it was met by the statement that the vindication stood by itself, and was a separate

statement, but I cannot recall anything on that.

Q. Did she instruct you to go down and deposit this in escrow, Mr. Stevenson?

A. You mean by specific instructions?

Q. Yes.

A. No.

Q. You just presumed it was all right?

A. That is it.

Redirect Examination.

Q. When these papers were signed, Mr. Stevenson, in your office, they were signed upon the distinct understanding that they were to go in escrow?

A. I so understood it, yes, sir. That was my understanding.

Q. Wasn't that discussed?

A. Yes.

Q. We agreed upon the escrow, didn't we?

A. It was generally understood that they were to go in escrow in the bank.

Q. And we canvassed whether we would put them in the Security Savings and Trust Company, or somewhere else. Do you remember the Portland Trust Company was mentioned?

A. I don't recall that. I remember it was finally agreed upon, the Security Savings and Trust Company. I don't remember.

Q. Do you remember when the papers were left with you, I said to Miss Cronen and yourself that I was perfectly willing to leave them all with you gentlemen?

A. Yes.

Q. Until I got the money?

A. Yes.

Q. At which time they were to go in the bank?

A. Yes, sir.

Q. Miss Cronen was there when that statement was made?

A. I believe she was.

Q. Now, you say you never saw the certificate of good moral character signed by Walter Baker Moore, until it was produced at the time the settlement was agreed upon? You mean that particular statement?

A. Yes, in the form—

Q. The fact is, it was, except written on different paper, exactly the form which you had OK-d, and which we had read over?

A. What I had reference to was the statement as signed.

Q. As signed?

A. Yes, sir.

Q. But the substance and language and form you had previously approved?

A. Yes, sir, I had.

Q. After consultation with and receiving the consent of your client to do so?

A. Yes, sir.

Q. There was to be no release, or I mean no vindication or declaration signed by Governor Moore—Miles C. Moore? That was discussed at the time, and waived?

A. It was waived, yes.

Q. And do you remember Miss Cronen saying at the time, "Well, I haven't anything against the Governor anyway. I don't care anything about it"?

A. Said something to that effect.

Q. With respect to the statement to be signed by Frank Allan Moore and his wife, you were subsequently advised that such a statement had been signed, and was ready for delivery?

A. Yes, yes.

Q. And that was after Miss Cronen had notified the bank that she wouldn't be bound by the escrow any longer?

A. My recollection is, it was subsequent to that time.

Q. Didn't want anything more to do with the matter, and you have understood ever since that we had the statement ready to make delivery of?

A. I believe you told me.

Q. And I have here today, and have had it since the 18th or 19th day of May, 1912, signed and witnessed, and everything just as called for.

Recross Examination.

Q. With the permission of the Court—there was something said at that meeting, some understanding, was there not, to the effect that this statement signed by Walter Baker Moore, and those to be signed by Frank Allan Moore and Margaret Gleason Moore, were to be placed of record in Multnomah County, was there not?

A. No, I think there was no understanding as to

that at that meeting.

Q. You never heard that discussed?

A. Yes, I have discussed that myself, with Miss Cronen, but nothing was said about it at that time; didn't in any way form a part of that agreement.

Q. Are you quite positive, Mr. Stevenson, about that.

A. I am reasonably positive; I have no recollection of it. The matter was entirely optional with Miss Cronen as to whether she wanted to make it of record, or not, and a matter the other side couldn't regulate or control, anyhow, and as far as I was concerned, there would have been no occasion to bring it up. It would have been our own arrangement afterwards.

Redirect Examination.

Q. Just one more question I forgot, with the permission of your Honor. You said a few moments ago that you didn't recall whether there was any talk or agreement with respect to the time when the statement from Frank and his wife was to be back; that is, to be back in Portland; the agreement was just as put down in writing, was it not? That that statement of Frank's, when it came here, was to go into the bank, or was to be delivered to you when the Walter Baker Moore matter was also closed up?

A. I am not prepared to say that was the exact understanding. There was a sort of feeling among us that the whole matter would be adjusted a great deal sooner than it was, and I am not prepared to say that

it was understood positively among us that this was—that the Frank Allan Moore feature of it was to await the consummation of the other settlement. My understanding was, in a general way, that any time the statement of Frank Allan Moore and Margaret Gleason Moore came here, they might be exchanged for this other, but I don't know there was any positive agreement on the last.

Q. Did you read what you signed here, and what was dictated in your presence before you signed it?

A. I probably did.

Q. Doesn't that provide all to be delivered at the same time?

A. Let me see. It was a long time ago.

Q. Just refresh your memory. Isn't this a fact: That Miss Cronen was extremely insistent that under no circumstances was the release of Frank Moore and his wife and Governor Moore to be delivered to me until she got the additional $3,000.00?

A. Well, I suppose that was evidently. She wanted to hold them until the whole thing was settled; in other words, she didn't want to release anybody—

Q. Exactly; anybody, until she had got the additional $3,000?

A. The general idea I had, they were trying to wind up all these cases together.

Q. Yes; and the time to wind it up was left fixed at 90 days?

A. As to the Walter Baker Moore. I am not so clear as to the others. No, there was some talk at the time as to how soon we could get these statements

back. That is the only thing that leads me to think there might be a sort of feeling that this phase of it could be concluded sooner. But I wouldn't say any positive meetings of minds upon that point.

Q. After reading the agreement, what do you say?

A. My view is unchanged.

Q. Unchanged?

A. Yes. It don't say in positive statement these papers to be delivered at the same time.

Q. Perhaps I mis-read it.

A. Maybe I did; it is possible I did.

Q. You will notice here that this statement when returned was to be delivered to the Security Savings and Trust Company?

A. Yes.

Q. If that was to be delivered, and the matter closed up as soon as the statement arrived, why did it go into escrow in connection with the other papers when it came here? Do you remember that?

A. Well, I want to make myself clear on that point. As far as my views went, if they are permissible here, I don't know that there was anything said between us at the time. But your side of the case would hold this statement until the expiration of the 90 days.

Q. That was distinctly understood.

A. I won't say distinctly understood. I say my mind is not clear upon that point.

Q. It says here: "The release herein referred to is to be delivered to A. E. Clark, and the written

statement aforesaid, to the aforesaid attorneys for Mary E. Cronen when said sum of $3,000 is paid, and upon failure to make such payment", the $3,000, the release of Frank Moore and his wife and Miles Moore, according to this, was to go back to you for Miss Cronen?

A. Yes.

Q. In other words, don't you remember that the talk there that day was, upon the part of yourself and Miss Cronen, that you didn't propose to deliver to me any release of any of the Moores until you got the second $3,000, and it was put in that stipulation in that form? Do you remember that?

A. Yes, that was the general view of it.

Witness excused.

JOHN F. LOGAN, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. CLARK:

Mr. Logan, you are engaged in the practice of law in this city?

A. I am.

Q. Have been for the last some years?

A. 20 years.

Q. 20 years. And you have been for three or four years associated in the practice of law with Mr. John H. Stevenson, who just left the stand?

A. I have been.

Q. You, I believe, and Mr. Stevenson, were at-

torneys of record for Mary E. Cronen in the breach of promise case she brought against Walter Baker Moore?

A. We were.

Q. And so continued up to—you are yet, are you not, as far as the records show?

A. We are.

Q. Did you receive any notice of dismissal or withdrawal of your authority to represent her, until after February, 1912?

A. No.

Q. The first notice of that character was in July of this year, was it not?

A. I think during the month of July.

Q. July 15th, according to the records of the court? Now, I, you understand, was, at the time attorney of record for the defendant in that latter case?

A. Yes.

Q. The negotiations for settlement of this case, this later case, covered about what period, Mr. Logan?

A. Oh, they covered a period from about one hour after the summons was served on the defendant; I got a telephone communication from Senator Brownell, I believe, within an hour after the papers were served.

Q. That is before my retention?

A. The next day I received a visit from Mr. Edgar Piper, editor of the Oregonian, a friend of Governor Moore, looking to a settlement.

Q. And negotiations continued in progress from then until settlement was effected?

A. They continued right down with no definite results until—

Q. We had—upon the one hand with respect to the amount to be paid, we had offered you amounts ranging from $2500 to $3500 for many months?

A. Yes.

Q. And you gentlemen were claiming a right to recover a considerably larger sum; I don't remember how much, but I think at first blush you thought the damages were large?

A. We did.

Q. And finally, in the course of the negotiations, you reached what I think you called your irreducible minimum?

A. Yes, I said the irreducible minimum was $7500, if I remember rightly. And you said that your unincreasable maximum was something like $3500.

Q. Yes, and there seemed to be a hiatus there that could not be bridged.

A. We both threw aside the contradiction in terms, and came to an agreement.

Q. But as a matter of fact, it took us a great many months to get together on the amount?

A. We negotiated—I remember I returned from San Francisco some time during the month of February, about the 13th or 14th of February. We came to an agreement just about that time.

Q. That was the first time we had come to an agreement, really, upon the amount?

A. I had been away from Portland during the first half of February, and we came to an agreement

about the 15th of February. I will say right here that Miss Cronen never haggled about the money any of the time. The amount of money didn't concern her at all. She always maintained that that was secondary.

Q. Why was this irreducible minimum?

A. That was the interest the attorneys had in the case; all through this matter where the matter of $5,000 was to be paid over, and all that, that was the extraordinary interest that the contingent fee had to do with the case. Miss Cronen never at any time considered the money as the important factor.

Q. Do you remember when the settlement was finally agreed upon?

A. The settlement was finally agreed upon—we were backing and filling quite a deal. I remember we came practically to a settlement in your office one time, when Mr. Lee was present.

Q. I am speaking now of the 24th of February, 1912.

A. Well, about a week before that, we came to an agreement. The trouble then was upon the form of the paper that Mr. Walter Moore was to sign. I believe Walter Moore was in San Francisco, and it had to be forwarded to him at the time, and you were in telegraphic communication with him. The controversy about this business of the property arose when the form was submitted, verbally, I think to you and to Mr. Lee, in your office, when Miss Cronen, through me, insisted that the certificate that was to be signed was—with reference to her character, and that was—

all her actions were made with an eye single to that, that it would be from him and his family, and Mr. Lee refused to allow the certificate to come from—

Q. Do you remember about when you came back from Frisco?

A. Why, I got back about two days after you did, Judge, about the 15th of February.

Q. 15th of February?

A. I remember that Judge Bean and I were talking about coming together from San Francisco, and I think I came two days later than he did. I went to visit my mother in Oakland.

Q. Aren't you in error about discussing that in my office?

A. I remember that distinctly.

Q. Because my correspondence shows that the form which was actually signed as prepared by Mr. Stevenson, was mailed to me from San Francisco on the 16th day of February.

A. Well, I probably got back a little earlier then.

Q. And it had been—now, just refresh your memory.

A. I know there was a delay while I went down there, and we never finally came to a conclusion until after I got back. I remember distinctly. We were offering and counter-offering for months beforehand. The thing that brought it,—the records of that court will show—the thing that brought it to an issue was the fact that he case was coming to trial right here in this courtroom some time in February.

Q. What time did you leave for Frisco?

A. I think I left about the very first of February, or the last day of January.

Q. Then, isn't it true that before you left for Frisco at all, the form had been agreed upon?

A. I think the settlement had been agreed upon.

Q. And the form?

A. That I don't remember.

Q. Just refresh your memory. I see from my correspondence that the form that was finally agreed upon was received—was transmitten to Frisco under date of February 5th.

A. The matter of forms in these things was left to Mr. Stevenson. I know there was no definite agreement at settlement until after I got back.

Q. And that the delay then came because Mr. Moore sent back a different form, which, when returned here, wasn't satisfactory, and we finally got him to sign the form which had been approved prior to the 5th of February.

A. Yes, the delay was on account of the form, you know. There was never any trouble about the money. Miss Cronen never complained. It was always we lawyers that were making trouble about the money.

Q. Well, I didn't gather that from what you lawyers used to tell me, but of course you didn't care to disclose your motives at that time. Well, we got down to the 24th, anyway. How did I happen to come over to your office that day?

A. I don't know; to get that case settled before the trial. That is what brought you over.

Q. How did I know that you and your client were there waiting for a settlement?

A. I haven't a bit of doubt Mr. Stevenson sent for you.

Q. You sent for me?

A. Mr. Stevenson. Mr. Stevenson was carrying on my work.

Q. Now, were you there during the course of the negotiation?

A. I was.

Q. Did you look over the papers?

A. I did.

Q. Did you familiarize yourself with the scope and character of them?

A. I did.

Q. Did you understand them?

A. Yes.

Q. In whose room did the negotiations which finally culminated in the signing of these papers occur?

A. Mr. Stevenson's.

Q. Who were present?

A. Mr. Stevenson, Miss Cronen, yourself and myself, and part of the time the stenographer.

Q. And how far did Miss Cronen sit from where Mr. Stevenson sat?

A. Oh, they all sat around the table.

Q. They all sat around the table within a few feet of each other?

A. Yes, sir.

Q. The room—we all sat in one end of the room, did we not?

A. Yes; either one of us could touch each other at any time from where we sat.

Q. I was the only one being touched that day.

A. I don't know about that.

Q. However that may be—

A. I will say I don't think that the young lady got one cent more than she was entitled to.

Q. I don't say she did, but she got all she was entitled to, as you thought?

A. No, I don't think that.

Q. We were all there within easy hearing distance of one another?

A. Yes, yes.

Q. Now, you remember that there was some discussion with respect to the scope of the release of Walter Baker Moore?

A. Quite a deal. Miss Cronen was very suspicious.

Q. You took part in the discussion?

A. I did.

Q. Miss Cronen was very suspicious?

A. Very suspicious indeed.

Q. She was exceedingly anxious to know everything that was going on?

A. She was.

Q. And exceedingly anxious she should understand everything?

A. She was.

Q. And she insisted on going into everything carefully?

A. She did.

Q. And understanding all the terms of everything that was put in any of the papers?

A. She did, very intelligently.

Q. She is an intelligent woman, isn't she?

A. I have seldom met in all my experience a more bright, intelligent woman than Miss Cronen is. I don't know of any; with all the brilliancy of her ancestry.

Q. From your experience in dealing with women clients, conducting business in professional transactions, you are of the opinion, are you not, that Miss Cronen understood exactly what was going on that day, as fully as possible for any person to understand?

A. Except one particular later on.

Q. I mean with respect to what was in the paper.

A. With respect to the settlement with Walter Moore, it was absolute.

Q. Absolute.

A. After we had explained the question about heirs and assigns.

Q. She herself brought up, when that release was read, the question whether that released anybody but Walter Baker Moore?

A. That was brought up; I infer was brought up by her.

Q. And you took part in the discussion, and we finally concluded, did we not, it didn't release any of his collateral relatives or his ancestors?

A. Remarkable unanimity of judicial opinion.

Q. Did you read over the escrow agreement, that is, the instructions to the escrow in the Walter Baker

Moore case?

A. I did.

Q. You understood them?

A. I understood them.

Q. And was Miss Cronen made acquainted with them?

A. Yes, she was.

Q. And also you remember that certificate which Walter signed?

A. Yes.

Q. You know, I suppose, that was produced in the form that had been approved by Mr. Stevenson?

A. I think it was.

Q. And do you remember how the question arose which was the occasion of my certifying to Walter's signature?

A. Well, everything went as smooth as a marriage day until Mr. Lee refused to have the family sign, and then Miss Cronen immediately became suspicious, and she insisted, if I may go on, she insisted that there was something wrong that the family would not sign. She was suspicious of Lee, and she was suspicious there was something wrong, and she wanted a certificate from the family, because the family had been the cause, as she claimed, of the trouble. And on that day, when that certificate came from Walter Moore, while she was familiar with his signature, she wanted to be sure that it was. She wanted assurance from you, for the reason that Lee had procured it, she said, and she would accept your statement, and she wanted your assurance that it was his.

Q. So I certified it?

A. And you certified it, and then and there she again bethought herself that she wanted the family, and right then and there she insisted that the family should take part in it to the extent that Governor Moore should, with Frank Allan Moore and his wife —she being just as much a party as Frank Moore.

Q. It was on this point, in the course of the negotiations, that the question was brought up about the other members of the family?

A. Well, the young lady always wanted that.

Q. Why was it that your office, if that was the case, that your office prepared and submitted to me, and had me procure from Walter Baker Moore the certificate from him alone? Where is the blame?

A. I don't think any blame except this: We lawyers looked at it from the money side, and she from the sentimental side. We looked at it from the sordid financial side, she from the sentimental side.

Q. The point is, didn't I procure—

A. Any criticism I make now is just as much to us as you. I don't say you were to blame. I say we were looking at the money end and settlement of the case, and the young lady was looking after the sentimental end of the question on her part. I have learned a lesson in this case, if I may inject here, we should have looked at the other side, and further, we should have taken her instructions in writing. I have learned that lesson in dealing with women.

Q. That wasn't up to me. She was your client and not mine. However, she was the one who want-

ed that certificate by me put on the declaration signed by Walter Baker Moore.

A. Yes.

Q. It was put on there at her request?

A. Yes.

Q. Now, after that was all done, this question came up about the signing of a declaration by other members of the Moore family?

A. She wanted Governor Moore, Frank Moore and his wife.

Q. And finally it was agreed that a declaration should be signed by Frank Moore and his wife?

A. Frank Moore and his wife.

Q. I stated at that time, did I not, that I understood that the Governor was in Frisco, about to go to Honolulu or the Orient?

A. Yes, sir.

Q. And whether or not he would be back within the 90 days when the three thousand was to be paid, I didn't know. So, do you remember Miss Cronen saying she didn't care anything about the Governor anyway. She had nothing against him, and that was waived?

A. Yes, she said, she said very freely, "I haven't really anything against the Governor. I want the family. He is part of the family, and I want his name with it. I haven't anything personally against the Governor. The Governor and I could get along, if it wasn't for some other things."

Q. And it was agreed the Governor's signature should be waived?

A. She waived the Governor.

Q. Do you recall the form in which the certificate of Frank and his wife was to be signed?

A. I remember the form.

Q. Do you remember the discussion as to the particular language to be used?

A. I remember that.

Q. The use of the word "gentle woman"?

A. I took great interest in that.

Q. And you and she discussed just what the scope of that was? She wanted that in, and you wanted that in?

A. I did.

Q. And it was put in?

A. It was put in; no question about that.

Q. No question about that, and there is no question, either, is there, but you and Mr. Stevenson and Miss Cronen fully understood everything that was put in the papers with respect to Frank Moore and his wife and the Governor?

A. Oh, yes.

Q. No question about it?

A. I would be much surprised if anybody said any one of us didn't understand.

Q. So that the whole agreement between the parties was put in writing, finished up in that way?

A. Yes.

Q. Do you remember when all the papers were signed, they were left there in your office?

A. Yes.

Q. Because I didn't happen to have the $3,000

with me.

A. I think so. A good deal of this detail, Mr. Clark, was left to Mr. Stevenson. I considered, let me say here, I considered I was in this case as advisory counsel. Mr. Stevenson was acting. The way the case came to the office, I understood it that way, and never understood it any different until after the case was settled.

Q. Did you understand all the papers that were to go in escrow?

A. Oh, yes.

Q. No question about that. Your office never—your office was authorized by your client to take these over and put them in escrow?

A. Authorized right there. The papers spoke for themselves.

Q. And that authority was never revoked?

A. Never revoked, no.

Q. And you recall that Mr. Stevenson did put the papers in escrow? You know that, as a matter of fact of office history?

A. As a matter of fact of office history.

Q. And your office was paid on account of Miss Cronen, the sum of $3,000?

A. It was.

Q. It was, of course, accounted for to Miss Cronen?

A. Was accounted for between Miss Cronen and the office.

Q. And as far as you know, that has been retained?

A. The part that came to me has been retained, I assure you upon that.

Q. And as far as you know, Miss Cronen has retained what she received?

A. Yes.

Q. Mr. Logan, did you know, before the notice was served on the Security Savings and Trust Company, that Miss Cronen was to serve a notice rescinding, or attempting to rescind the escrow agreement in April, 1912?

A. Yes, I think I did.

Q. Before it was rescinded?

A. I think I did, yes.

Q. Did you prepare the notice of rescission?

A. I did not.

Q. Do you know who prepared it?

A. I do not.

Q. Through whom did you get the advice that such a rescission was going to be made?

A. From Miss Cronen herself. She complained that the acquittance or certificate from Frank A. Moore and his wife had not been forwarded in the time that she had agreed to.

Q. Was it your understanding at the time that we were to receive the release of Frank Moore and his wife and Governor Moore before we had paid the additional $3,000?

A. Well, now, it wasn't my understanding that it was to be paid over, as a matter of contract, when it was turned over, but I can see now that Miss Cronen understood it that way.

Q. That is, you mean to say that it was her intention to turn over to us, or Frank Moore and his wife and the Governor, before we had paid her the additional $3,000?

A. The way is this: it requires a little explanation,—I wasn't there all the time while this was being dictated, but this last stipulation with reference to Frank Allan Moore,—I had a notion that the $3,000 was to have been paid much sooner than 90 days, but out of an abundance of caution, the 90 days was named, although you first wanted a longer time.

Q. Yes, I wanted 120 days.

A. Out of an abundance of caution, 90 days was named. Miss Cronen—and there again comes the matter of money that we were looking after, and the matter of sentiment and vindication of character she was looking after—she said to you, "Now, when can that be back?" And you said, in substance, about as soon as the mail can get back from Walla Walla, as you walked out of the room, because you said you were going away over to the Sound the next day or Monday. This was Saturday. She said, "I want to know when that will be back. I want to know. That is what I want", and you said two weeks that would be here, giving ample time for delayed mail.

Q. Then it was to go in—when it returned, it was to go into escrow in the Security Savings and Trust Company?

A. It was.

Q. And was to be delivered at the same time the money was?

A. It was.

Q. I gave it as my opinion we could get it back here in a couple of weeks?

A. You did.

Q. And that notwithstanding 90 days is fixed?

A. Yes, because she wasn't to get the vindication without the money. You could hold that vindication without the money.

Cross Examination.

Questions by Mr. NOLAN:

You heard Miss Cronen speak about the time when these certificates should come back from the Moore family?

A. Yes; yes, I heard that.

Q. Now, what were the exact words used in that connection, as you remember them?

A. Well, Miss Cronen all the time, she didn't pay a bit of attention to the money end of it. She was looking after the matter of vindication. She first insisted there should be a vindication from the Governor, and Mr. Clark said, "Why, Miss Cronen, I can't get this matter of Governor Moore back in 90 days". He wanted it back in 90 days; he wanted it all here. "Now, if you insist on having the vindication from Governor Moore, you will simply have to give me further time to get it, because I am not going to turn in the vindication without the money," and she was so insistent upon getting the vindication from Frank Moore and his wife, that she waived the Governor with the explanation, your explanation,

that in fact, she really had nothing against the Governor; that the Governor himself and she could get along if the Governor was let alone.

Q. This vindication from the Governor was to be returned anyway, but delivered to her?

A. No, it wasn't, because at the time, she was so anxious to get her certificate from the other people, that she wasn't going to wait for the Governor.

Q. Was anything said about these certificates going on record?

A. I will tell you about those certificates. The young lady wanted them on record. She spoke to me about getting them on the Miscellaneous Records of Multnomah County, and I believe we prepared a statement from Walter Moore, with the title of this court, so that it could be filed in this court; but some way or other, the other side would never sign over a vindication with the title of the court on it.

Mr. CLARK: Why, we did.

A. Until finally I came to Mr. Clark, and told Mr. Clark that is what I wanted, and Mr. Clark very agreeably said, "if we sign at all, I am not afraid of having it made public". He was very frank about it. I told him that was what we wanted; wanted to file it in this court. She was always after vindication. I frankly told Mr. Clark her purpose; we wanted to get it on the records here.

Q. When did Mr. Clark promise to have this vindication back from Frank Moore?

A. Mr. Clark never promised any definite time. He had two agencies to communicate with. He had

the agency of Mr. Walter Moore in Seattle, and Mr. Lee in Portland.

Q. When did the conversation about two weeks take place?

A. Right in Mr. Stevenson's room.

Q. This was after the meeting was over?

A. At the meeting.

Q. What?

A. At the meeting. As we were just closing the meeting, Miss Cronen was insisting all the time she wanted that down here in as quick a time as possible. We lawyers, I am satisfied, didn't give it the importance that she did, but I understood it was not to be given over until the money was paid over, and the money wasn't to be paid over until 90 days; it came with the money, although we understood the money would be here in a very short time.

Mr. CLARK: That is probably?

A. Yes, probably be here in a very short time. You would get the money, and it would probably be here in two weeks.

Q. When was the money deposited in escrow?

A. I don't know. Mr. Stevenson—you will notice they were all deposited by Mr. Stevenson. Mr. Stevenson did the active work. I was in the case in an advisory character, as I understood. The case didn't come to the office directly to me.

Q. Mr. Logan, do you know of any statement that was made in that meeting by any one, to mislead Miss Cronen in any way, as to what was being done, or as to what these papers contained?

A. Well, we are all wise after the event, and I can see now that Miss Cronen believed, and still believes that she was to get the certificate from Frank A. Moore and his wife and the whole case would be settled in two weeks. I am satisfied of that now. She believed at that time, but that was a matter that wasn't contractual and wasn't in the contract, and the attorneys didn't understand it that way. We had, if they wanted to force it, a right to keep all the matters until the 90 days. I see now, she understood it the other way.

Q. Miss Cronen didn't give any special authority for entering into this escrow agreement, outside of what is represented in that writing, as I understand?

A. Oh, Miss Cronen gave all the authority, of course.

Q. Just what is expressed in that writing is the authority she gave?

A. Yes, sir.

Q. She never told you outside of that to go down to make this escrow deposit?

A. She not only did it then, but she accepted the $3,000 and divided it. Yes, there is no question about that.

Witness excused.

C. H. ABERCROMBIE, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. CLARK:

Mr. Abercrombie, you are an attorney in the courts

of Oregon?

A. I am.

Q. You are also counsel for the Security Savings and Trust Company?

A. I am.

Q. There have been introduced in evidence, Mr. Abercrombie, a number of papers, marked "Exhibits 1 to 6" inclusive. I will ask you to examine these papers and state whether or not these papers were deposited in escrow with the Security Savings and Trust Company along about the 24th of February, or within a day or two thereafter, and whether or not they were produced by the Security Savings and Trust Company, this morning, through you, as its agent or attorney?

A. They are, yes, sir. I can give you the exact date of the escrow, if you will hand me that case they came in.

Q. Case file, yes.

A. February 24th we received these papers as an escrow, and have held them ever since until I brought them over this morning.

Q. Do you remember, or do you know whether or not, at the time these papers were received in escrow, there was paid through your bank, to Mr. John H. Stevenson, the sum of $3,000?

A. There was. The check was drawn to yourself.

Q. And do you remember that it came back endorsed over by me to Mr. Stevenson?

A. It did.

Q. And state whether or not that is the receipt that I gave you at that time for the money?

A. It is.

Mr. CLARK: This receipt is offered in evidence. Marked "Plaintiff's Exhibit 7".

"Portland, Ore. February 26, 1912.

Received of Security Savings and Trust Company Walter B. Moore, through Security Savings and Trust Company, Three Thousand Dollars.

A. E. Clark."

Q. Mr. Abercrombie, can you state whether or not, pursuant to the escrow, I caused to be deposited in behalf of Walter Baker Moore, the additional sum of $3,000, with instructions to pay it over to Mr. Logan or Mr. Stevenson, as attorney for Mary E. Cronen?

A. You did, yes, sir.

Q. Do you remember about when that was paid in?

A. It was paid in on May 6th.

Q. 1912?

A. 1912.

Q. And it came to your bank in what form?

A. In the form of a check.

Q. Drawn by me?

A. Yourself.

Q. Has that money been retained there ever since?

A. It is there now, yes, sir.

Q. And subject to the order of Mr. Logan, Mr. Stevenson, or Miss Cronen, under the terms of the escrow?

A. Well, it would have been subject to their orders if it hadn't been for the letter signed by Miss Cronen.

Q. I mean, you have taken and held it under the escrow?

A. Yes, we have held it under the escrow.

Q. And did you bring that $3,000 with you this morning, in the form of a draft?

A. I believe it is among the papers. Yes, I see it right there.

Mr. CLARK: I presume that while it is a little informal for me to make any tender in behalf of the Security Savings and Trust Company, I, representing the plaintiff; I think I am authorized, however, to say the Security Savings and Trust Company has, and now tenders into court the $3,000 deposited with it under the escrow to be disposed of, pursuant to any order the Court may make. Am I right?

A. While made a party defendant in this case, we have made no appearance, and desire simply to get rid of this escrow.

Q. And the money is brought into court for that purpose?

A. That is the idea.

Mr. CLARK: It isn't endorsed, your Honor. The draft is made payable to themselves. It isn't endorsed, and I presume that it can be endorsed in accordance with the order of court, if the Court should make an order, in any way or to any person the Court shall direct.

COURT: Leave it in the custody of the clerk.

Mr. CLARK: Yes, we will leave it in the custody of the clerk, and the Court can make an order in any form it may see fit.

WITNESS: If the Court please, I should like a receipt.

COURT: Leave it deposited with the Court. The clerk is custodian.

Q. Just one more question. Along about the 4th of April of this year, state whether or not the Security Savings and Trust Company received a communication from Miss Cronen.

COURT: I believe you better return that draft. Leave it in Mr. Abercrombie's possession until the order is made, and then it can be deposited. He is the custodian of it and then it will be better for the bank. (Draft returned to Mr. Abercrombie.)

A. The Security Savings and Trust Company received a letter from Miss Cronen.

Q. Is that the letter?

A. That is the letter.

Mr. CLARK: I offer it in evidence.

COURT: That is the letter from Miss Cronen?

Mr. CLARK: Miss Cronen to the bank.

Marked "Plaintiff's Exhibit 8" and read as follows:

"Portland, Ore. April 4, 1912.

Security Savings and Trust Company,

Portland, Oregon.

Gentlemen:

You are hereby notified that I have rescinded any and all agreements heretofore made with Walter

Baker Moore, Frank Allan Moore, Margaret Gleason Moore, Miles C. Moore, or A. E. Clark, their attorney, in regard to the litigation between myself and Walter Baker Moore, and together with the escrow agreement between myself and said parties, or either of them, and which was deposited with you on or about the 27th of February, 1912, wherein you were to deliver certain papers executed by me, and certain papers executed by some of said parties, upon the payment of $3,000 for my credit.

Said escrow agreement was obtained by fraud and deceit, and I will not be bound thereby. In case said escrow is delivered, I will be damaged in the sum of $100,000, and I will hold you accountable therefor. You are therefore hereby notified not to deliver the said escrow to any of said parties, or to any one, or I will hold you for the said damages.

Yours very truly,

Mary E. Cronen."

Q. State whether or not you immediately transmitted to me a copy of that letter?

A. I believe we did.

Q. And state whether or not the Security Savings and Trust Company since that time has taken the position that it didn't care to make delivery of these papers to any one until the rights of the respective parties had been adjudicated?

A. That is the position we take.

Q. Did you have any further participation in the escrow?

A. Yes.

Q. I show you a paper and ask you if that is the check which you issued to me when the papers were deposited in escrow?

A. Yes, sir, that is the original cashier's check.

Q. And that check was returned and paid through your bank February 26th, paid through the clearing house, February 26, 1912?

A. That is right.

Q. And was returned through the clearing house with the endorsement upon it that now appears upon it?

A. Yes.

Mr. CLARK: The check is endorsed "Pay to J. H. Stevenson, or order. A. E. Clark. John H. Stevenson." We offer it in evidence.

Marked "Plaintiff's Exhibit 9".

WITNESS: I would like to get a receipt in particular for that cancelled check.

Cross Examination.

Questions by Mr. NOLAN:

These papers referred to by you as an escrow were received in your bank on the 26th day of February, 1912. Is that right?

A. The 24th.

Q. The receipt is dated February 26th. How do you account for that?

Mr. CLARK: They were in fact put in on the 26th, the day the check was given. I remember that.

A. The entry that we have—the custom is to enter the date the escrow is received as noted on the out-

side of the envelope, which here is February 24th. The money was evidently received on the 26th, as the receipt shows.

Q. This $3,000 was paid on the same date that the escrow was received. Is that right.

A. Well, I couldn't say as to that.

Q. Well, it was about the date?

A. It was about.

Q. The money on this was paid on the 26th?

A. Yes, it was paid on the 26th.

Q. That was the date you received the escrow, was it not?

A. I presume it was, but I wouldn't swear to that, because the only evidence I have of the date of the receipt of the escrow is February 24th. The papers, however, probably speak for themselves, and it states that the $3,000 is received at the time of the deposit of these papers in escrow. It is probably a statement of fact.

Q. How did that receipt come to be given? How does it come that it was signed by Mr. Clark?

A. We received a telegram from Mr. Moore which is attached to this receipt—

Mr. CLARK: Now, here, when I unpinned this, I thought it was one of mine. I thought that was it.

A. This is the telegram authorizing the Security Savings and Trust Company to pay Mr. A. E. Clark the sum of $3,000 which we thereupon did, and took that receipt for it.

Q. Yes. These are the same thing. They both belong together, then.

A. Yes, this is the order to pay the money, and this is the receipt for the money. It should be pinned together.

Witness excused.

Proceedings herein adjourned until 2 P. M.

Portland, Ore., Wednesday, September 4, 1912, 2 P. M.

Mr. CLARK: I think all the papers relating to the several transactions have been introduced, and while this is a case brought by Walter Baker Moore only, to some extent it is dove-tailed in with the papers signed with respect to Frank and his wife and Governor Moore. I simply wish to say and have it spread on the record that we have here, and have had since the time prior to the expiration of the 90 day period, the certificate signed by Frank and his wife ready for delivery, of which fact Miss Cronen was notified, through her counsel, and it has been ready for delivery, and is ready for delivery, and we tender it in connection with the proceedings in this court, to be delivered in accordance with the stipulation of escrow. I think that is all we have to offer.

Plaintiff rests.

Mr. NOLAN: I wish to recall Mr. Stevenson.

JOHN H. STEVENSON, recalled by the defendant.

Direct Examination.

Questions by Mr. NOLAN:

Mr. Stevenson, have any certificates from Frank Moore, or Margaret Gleason Moore ever been ten-

dered to you for Miss Cronen?

A. Well, yes, I believe at or about—some time after the expiration of the 90 day period, Mr. Clark informed me that he had these certificates ready for delivery.

Q. That was after the 24th of May, 1912?

A. Yes.

Q. Not prior to that time?

A. No, not before that time.

Cross Examination.

Questions by Mr. CLARK:

Do you know whether I had informed your office, some time before, that we were ready to close up; that I had the certificates?

A. No, I don't know as to that.

Q. You don't know as to that?

A. No. I recalled that, about—some day or two—the date of it—I think it was on the day that the 90 day period expired, I called you up in reference to the matter, and you then asked me for three or four more days in which to procure the certificates, and I told you to go ahead and take the time, and my memory upon that point is—might be clearer. I know I reported the fact back to Miss Cronen that I had granted this extension of time, and she objected to my doing it, said it was unauthorized.

Q. Now, just to refresh your memory, wasn't that conversation probably about ten days before I told you I didn't know whether I could get it; that Frank was coming to town; and I got it before the time ex-

pired?

A. You showed me that afterwards, yes. I remember at that time, I have a very distinct recollection, you asked for additional time.

Q. You don't remember just when that was?

A. It was—the reason I am positive was because the time was about up, or up, and I wanted—

Q. My recollection is different about it, but then I can't argue with you now; but my recollection is, it was about ten days, and I wasn't sure whether I could get it or not, didn't I tell you, on account of Mrs. Frank having broken her arm?

A. Nothing was said to me about Mrs. Frank having broken her arm.

Q. It must have been Logan. That is all.

Witness excused.

MARY E. CRONEN, the defendant, being duly sworn in her own behalf, testified as follows.

Direct Examination.

Questions by Mr. NOLAN:

You are Mary E. Cronen, are you?

A. I am.

Q. The defendant on this case?

A. I am.

Q. You have heard the testimony of the witnesses of the plaintiff this morning?

A. Yes.

Q. Now, I would like to have you explain to the Court what conversation you had with Mr. Stevenson in regard to the escrow, and after it was deposited;

the first time you had any conversation with him after the deposit.

A. Well, the conversation I had with him was over the telephone.

Q. When was that?

A. Must I answer your question direct, or may I explain?

Q. Just explain to the Court what conversation you had with Mr. Stevenson after this alleged settlement. The first conversation you had with him after that time.

A. Well, I will have to go back several days before that, because I can't begin there.

Q. You talked with him soon after this alleged settlement, did you not?

A. Yes, I telephoned him, and left a message with Mr. Sam Johnson, his secretary, to hold those papers until I could get down to the office; there was something more I wanted to speak about that I had overlooked the other day, or didn't thoroughly understand. He said to come now, it must go to escrow.

Q. When was that you had this conversation with him?

A. Well, I understood it was the next day, but it must have been Monday morning, because the papers were signed Saturday, and the following day was Sunday, and I know the telephone was at his office, and he wouldn't have been in his office Sunday.

Q. Now, what did Clark say in that—at that meeting in regard to Miles C. Moore, as to a vindication from him?

A. Now, I shall have to explain that when I went to that office, we had haggled—I can't put it any other way than haggled—about the vindication for months. Mr. Clark said it was aside from the case, and my own attorneys told me it couldn't be handled legitimately, according to law. It was a woman's whim—all that sort of thing. I said as long as it was a woman's whim, and when agreed upon, it would hold—is that right? I have never been on the witness stand before.

COURT: Answer the counsel's questions.

Q. Was there any understanding about getting a certificate from Miles C. Moore?

A. There was.

Q. Yes?

A. No, I waived that, because Mr. Clark could not get that. He said Mr. Moore was on the way to the Orient. He was either about to sail, or he had sailed the day previous. He had every reason to believe Mr. Moore was on the way to the Orient at that time, and would not be back at the end of 90 days. I said, "I can't wait, I will take the other two".

Q. Do you know whether or not Mr. Moore was on the way to China?

A. I saw him a day or two afterwards at the Multnomah Hotel at dinner.

Q. So he was not on his way at that time?

A. No.

Q. Had you known that Mr. Moore was in the City or where he could have been reached, would you have entered into this stipulation?

A. No, I never would. I didn't think Mr. Moore's word counted for a great deal, but it was—I didn't feel any enmity against Mr. Moore, however, I had been misrepresented; it was his son, and it was a father's privilege to favor his son the way he had done.

Q. You heard the testimony about Mr. Clark's getting the statement about Frank Moore?

A. Mr. Clark and my own attorneys don't remember that but I remember that.

Q. Tell the court what Mr. Clark said in regard to that.

A. When it came to the discussion about having this here; when I found that that was not there in the office, I said we were not—that was the 24th day of February and the case was set for the 29th, and if they waited—they weren't sure they could get this, and I didn't want to run any risk of not getting that. I counted that above anything else in that statement, and Mr. Clark said no; he said he couldn't do that, or couldn't furnish that in sufficient time, or something; I don't know just how. I said, "Well, then, you understood all the time I intended to file defamation of character suits all along". I have wanted these people to settle all under one heading or I will file defamation of character cases." Mr. Clark said "Go ahead and file them". Then my own attorneys came in and persuaded me the thing could be arranged amicably, and it was at that time and that moment Mr. Clark said he could have them there by return mail.

Q. Now, would you have entered into this stipulation had he made any other promise to you?

A. I don't believe I would.

Q. Was there an understanding about having the certificates of vindication placed on record any where?

A. With my own attorneys we held it was my privilege to do it when I got them. That is why I wanted them in the form of an affidavit—must be properly attested.

Q. Was that talked over at this meeting?

A. Only this, that when Walter Baker Moore vindicating document was given to me, I refused to take it for the fact that it was not properly attested, and then Mr. Clark signified his willingness to identify the signature, and he assured me at the time "don't I know the signature" I said, "and know it very well after all these years, but that isn't the point."

Q. What was said at that meeting about their being recorded anywhere?

A. I don't know that we discussed it in the presence of Mr. Clark. I know it was well understood between me and my attorneys, that I might and I should put it on record, and should refer my friends to that.

Q. You don't know whether Mr. Clark understood it or not?

A. I don't know what took place between the attorneys. I know what took place between the three of us at that time in the office.

Q. Now, Miss Cronen, tell the Court what was to

be deposited in escrow.

A. Well, as I understood it, I understood that the release was the only thing to be deposited in escrow.

Q. Which release?

A. My release of Walter Baker Moore.

Q. And what was to become of the other papers which you signed?

A. I didn't know until this morning and they were shown in court, there ever were two papers in the escrow.

Q. What was to become of the paper signed by Walter Baker Moore?

A. It was to be given to me.

Q. At that time?

A. That is what I understood. I counted on that, and that is the thing that I called up Mr. Stevenson particularly for that morning, was to understand whether that was included in the escrow, because I hadn't understood it. I wanted that at that time.

Q. Would you have entered into this agreement if you had understood that was to be deposited in escrow?

A. No, I wouldn't have done it, because my whole ambition was to have that thing at that time. That was one of the valuable considerations at that time, or else it would have gone to trial.

Q. Now, there is testimony to the effect that you saw and went over the stipulation which was made with regard to Frank Moore.

A. Regarding Frank Moore, Frank Allan Moore?

Q. Yes, the stipulation the attorneys entered into

in regard to the vindication from Frank Moore and settlement with him. Was that drawn up in your presence?

A. That was drawn up in my presence.

Q. You saw it?

A. Yes.

Q. You understood its contents?

A. I understood its contents, and that it was to be turned over to them in a day or two, or, as Mr. Clark stated, by return mail. Those were the exact words, as I remember; and that release of Frank A. Moore and his wife, and Miles C. Moore was to be given to them just as soon as this came down, which was to be in a day or two, or return mail.

Q. How about the escrow agreement which has been introduced?

A. I never saw that. I never knew it existed until I saw it in the courtroom this morning.

Q. Was that drawn up in your presence at that meeting?

A. If it was, I don't know it.

Q. Did you see the stipulation which your attorneys entered into, in regard to the dismissal of the case you have against Walter Baker Moore?

A. You mean the release of him?

Q. No, the stipulation which they entered into?

A. Between the attorneys?

Q. Agreeing to release on its merits.

A. I don't understand the legal phrase. If you refer to the release of Walter Baker Moore, what we usually call that paper—

Q. That is Plaintiff's Exhibit 2.

A. No, I don't know anything about this at all.

Q. Was that drawn up in your presence at that meeting?

A. I don't know anything about it. I left that entirely with my attorneys, and I trusted them implicitly with everything.

Q. You are quite sure that never was read to you?

A. I don't know it if it was.

Q. Now, what papers did Mr. Clark have already prepared when he came to that meeting?

A. The declarations from Walter Baker Moore, and the release of Walter Baker Moore.

Q. That was the paper which Walter Baker Moore had signed, and which he certified to, and the one which you signed with regard to Walter Baker Moore?

A. Yes, sir.

Q. Mr. Clark had those were already prepared, and then he submitted them to you, did he?

A. Yes.

Q. You read them over?

A. Yes, and I objected to the reading of the top line saying that for $6,000. I objected. I said, no, this isn't being settled for $6,000. It is being settled for $6,000 and these vindications. And they all said this was a minor matter. It wasn't a matter which should be put in a legal document, and didn't make much difference, and I ought to let it go at that. And I did.

Q. That is the reason you signed it, because they told you?

A. Well, I had an idea it was all right, and I just signed it.

Q. Now, what other papers were prepared and executed at that meeting other than what I have mentioned?

A. The release of Frank A. Moore and his wife, and the form of their vindicating affidavit. Now, when we read over Walter Baker Moore's affidavit "and my family", "for reasons peculiar to himself 'and my family' ", or "to myself and my family", the "my family" was left out. After they had been repeatedly returned, I said I simply wouldn't accept the thing, simply wouldn't accept it unless it contained that.

Q. Why did you execute it while that wasn't in it after it came back?

A. Well, I was just simply there, and I just did it. I was utterly disgusted as it was. The thing had been hanging then about a year.

Q. Now, what was the understanding as to what should become of these releases and various papers in case this additional $3,000 should not be paid?

A. Should not be paid?

Q. Yes.

A. The papers were to be returned to me, and Mr. Clark specially stipulated in case, when I said to him—here is where I must explain—M. J. Lee sitting over there, followed me into the Portland Library about the 18th of February, and he proceeded

to intimidate me, as he had been employed to do for months, no, for years before, about these goods they had on me, and that goods they had on me, and another few things. And in the meantime, this thing was in progress. At any rate, when I mentioned the vindication, he said they will never give a vindication. Mr. Clark subsequently came to $6,000, nothing else, and I said "the case will never be settled; that is all there is to that."

Q. Now, you have alleged in your answer, among other things, that you were to retain this $3,000 which was paid, in case these certificates from Frank Allan Moore and Margaret Gleason Moore were not returned to you within the next day or two?

A. It was those things that Mr. Lee had told me that prompted me to ask Mr. Clark "what guarantee have I they will ever be signed? What guarantee have I that you will do the thing you promise?" He said the guarantee I have, aside from this here is $3,000, if they refuse—if that contract isn't carried out.

Q. That is, Mr. Clark promised and agreed—

A. To refund that. It was in order to make me accept his promise that they would be there by return mail. He didn't say within two days, or anything of the kind.

Q. What was said about two weeks there?

A. That must have taken place out in the hall.

Q. Did you overhear that conversation?

A. I never overheard it.

Cross Examination.

Questions by Mr. CLARK:

Do you recall, Miss Cronen, the fact that the papers concerning Frank A. Moore and his wife, and the Governor were dictated in the office that day?

A. They were, but do you remember why they were dictated in the office that day?

Q. I have a very distinct recollection, but if you will answer my questions we will get along better.

A. I remember they were. I answered that I did.

Q. Do I understand you to say you understood those papers?

A. Just put that—

Q. Did I understand you to say awhile ago, in answer to Mr. Nolan that you understood those papers?

A. That I understood the release of these people? Yes.

Q. The Frank A. Moore papers that you heard dictated that day?

A. Yes, that I was to release him when they turned in those vindicating affidavits to you.

Q. Release Frank A. Moore?

A. Yes.

Q. And the other paper which contained the form of the vindication were both dictated in your presence?

A. Yes.

Q. And written out while you were there?

A. Yes.

Q. And afterwards brought back in the room where we were all sitting and signed up?

A. Yes.

Q. That is so, isn't it?

A. Yes.

Q. Now, you understood the papers that you heard dictated that day, didn't you? You understood what occurred?

A. Well, there were verbal provisions always on the—

Q. I am speaking now of papers. You understood the papers?

A. I understood.

Q. And you understood that we were putting our agreement in writing?

A. Yes. When I objected to certain forms, you kept saying "That isn't the law, that of course this is all form."

Q. Who were representing you that day?

A. You all there were—you all three said that isn't the law; this is a form.

Q. Who was your attorney?

A. Logan & Stevenson.

Q. They represented you?

A. Yes.

Q. I represented Walter Baker Moore?

A. Yes, sir.

Q. Now, we talked over the agreement first, then we put it in writing, didn't we?

A. Yes, sir.

Q. And do you remember the controversy, or

rather the discussion that day as to the form of the vindication?

A. Yes.

Q. That Frank and his wife should sign?

A. Yes.

Q. You indeed practically determined the phraseology of that, didn't you?

A. I did not.

Q. Who did?

A. Mr. Logan and Mr. Stevenson.

Q. Did you take any part in the discussion?

A. A week or two previous to that when Mr. Stevenson was in your office and you thought you had arrived at a settlement, I suddenly thought maybe he didn't remember that and maybe—

Q. Did you ever see me or talk with me at all, or meet me in my office at all until the afternoon of the 24th?

A. I never saw you.

Q. You never talked with me over the phone, or I never conversed or communicated with you, directly or indirectly, until I was introduced to you that afternoon?

A. Yes.

Q. Now, coming back to the day that we actually drew up these Frank A. Moore papers, you practically determined the form that was put in the agreement that day, didn't you?

A. It was determined by Mr. Logan and Mr. Stevenson.

Q. In consultation with you?

A. No, simply because it was a matter of form. When I insisted upon retraction, I insisted upon certain things that I must have retracted. They said, it won't do, it ain't the law.

Q. Who did?

A. My attorneys.

Q. Do you remember insisting that there should be put in there, that form, that she is a gentlewoman?

A. No, I didn't anything of the kind.

Q. You didn't have anything to do with that?

A. I didn't.

Q. Didn't you hear that at all in the discussion that day?

A. That is not—as that stands there it is not what was accepted that day.

Q. It is not what was accepted that day?

A. No, it is not.

Q. You mean to say that this agreement which Mr. Stevenson signed and which was dictated in your presence—

A. I don't know anything about whether he signed that or didn't. That thing as you read it this morning is not what we agreed upon in that office that day.

Q. That is not what you heard dictated that day?

A. No.

Q. It is not what you heard dictated that day at all?

A. No.

Q. Does it bear any resemblance to it?

A. It bears a very great resemblance, yes.

Q. Now, your idea is now that what was dictated and signed in the office that day in your presence is not what was produced in court?

A. That is not it.

Q. Then you mean to say that your attorneys substituted something which wasn't agreed upon, dictated or signed that day?

A. I have only my memory to serve me. Usually it is a very good memory.

Q. Now, what was there in those papers that were dictated that day which was not in the one produced?

A. I will tell you right away.

Q. When did you make the memorandum from which you are reading now?

A. That memorandum I have had in this book for a long time.

Q. When did you make it?

A. I made it somewhere along about last—I guess probably the 10th of last February.

Q. The 10th of last February?

A. When I decided on what would be the vindication.

Q. That is you made the memorandum which you are now reading on the 10th of February, or fourteen days before the settlement?

A. Yes.

Q. Read the memorandum.

A. I don't need to. It was simply the last clause in that—that they knew nothing about me which would detract from the character of a true gentlewo-

man. I didn't tell them to say I was a gentlewoman, but that they knew nothing about me that would detract from my character as a true gentlewoman. That is certainly what was signed in that office.

Q. Did they sign anything in the office that day?

A. It was the thing that was put up to me and that they were reading to me in that office. That is what I accepted.

Q. What other difference is there?

A. I don't remember any other difference.

Q. Then, outside of that difference which you say was not the form dictated, the paper in court is exactly what you heard dictated and read and signed in the office?

A. It is about that.

Q. You recognize or recall no other difference?

A. About that.

Q. You are sure now there is no other difference you recall?

A. I am not sure at all.

Q. You are not sure at all?

A. No, I am not. I can't be positive of anything.

Q. You are positive though that the form in this paper is not the form agreed upon?

A. Those last words, I remember very distinctly, is not the form agreed upon. I remember that very distinctly.

Q. That is the only difference you remember, is it?

A. That is the only difference that comes up to my mind as positive.

Q. Do you think of any that comes up to your mind, not positive?

A. No.

Q. How long were you in the office that day?

A. I don't know.

Q. About how long?

A. Well, I went there at one o'clock, and I suppose it was possibly half-past two when I left. I couldn't say positively.

Q. Possibly there a couple of hours. Several papers were dictated and written out while you were these?

A. Two of them that I know of. I don't know of any others.

Q. You remember signing the release of Walter Baker Moore?

A. Yes.

Q. You say you do not recall any escrow agreement?

A. With that paper?

Q. Or any other?

A. I do that that escrow, that release—

Q. I understood you to say that you do not recall any escrow agreement having been talked of, exhibited or signed that day.

A. You are mistaken, I didn't say that.

Q. What did you say?

A. I said I understood from my attorneys and from you that because the Moores couldn't furnish six thousand dollars at that time, that they wanted ninety days, and I said "Well, that will be all right. I don't

care about that; they can have all the time they want to, but my release must be kept until—

Q. Where was it to be kept?

A. In escrow in a bank. My release, not the vindicating document.

Q. Your release?

A. Only.

Q. And what was to be done with the release of Frank?

A. Why that was to be given to Frank by return mail when these vindicating affidavits were given to me.

Q. Now, do you recall that all the papers were left with your attorneys?

A. Yes.

Q. All of the papers?

A. Well, I can't say that because—

Q. (interrupting) Well, you understand—

A. (continuing) I understood until this morning that that release of Frank Moore was in your possession. I didn't know it was in the bank at all, and I tell you I don't know whether the escrow covered that paper at all. I understood all the time that was in your possession.

Q. And you never understood to the contrary until this morning?

A. That was the first I knew about it.

Q. And you never understood any of the Frank Moore papers were in escrow until this morning?

A. That was the first I knew about it. I never knew that.

Q. Do you recall writing a letter to the Security Trust & Savings Bank?

A. I remember distinctly I did.

Q. At that time you had no idea at all that any papers relating to Frank A. Moore were in escrow—or his wife or Miles?

A. I didn't know where they were.

Q. Now, wait a moment. Until this morning—

A. (interrupting) I don't know that they were in escrow.

Q. Until this morning?

A. Yes.

Q. You didn't have the slightest notion?

A. No. Now, don't think you will corner me there, because you will not, for I have experienced so much trickery since this case, that anything I write is going to give the information.

Q. I am glad I didn't represent you in the case. Until this morning now, you had not the slightest notion that the Frank Moore release or any of the papers relating to the Frank Moore matter were in escrow, and you supposed all the time that release was in my possession?

A. Yes.

Q. And you supposed that the only papers that were in escrow until this morning—

A. Yes.

Q. (continuing) was the release of Walter Baker Moore?

A. Yes.

Q. And you didn't discover to the contrary until

you came into court this morning?

A. Yes.

Q. Now, will you please tell me why on April 4th, all these things being true—

A. Yes.

Q. (continuing) that you wrote to the Security Trust & Savings Bank as follows: "You are hereby notified that I have rescinded any and all agreements heretofore made with Walter Baker Moore, Frank Allan Moore, Margaret Gleason Moore, Miles C. Moore, or A. E. Clark, their attorney, in regard to the litigation between myself and Walter Baker Moore, and together with the escrow agreement between myself and said parties or either of them, and which was deposited with you on or about the 27th day of February, 1912, wherein you were to deliver certain papers executed by me and certain papers executed by some of said parties upon the payment of three thousand dollars for my credit. Said escrow agreement was obtained by fraud and deceit and I will not be bound thereby." Now, if you didn't know until this morning, hadn't the slightest conception until this morning that any paper touching Margaret Gleason Moore, Frank Allan Moore, or Miles C. Moore were on deposit at that bank, or that any escrow agreement relating thereto had been made at the bank, why did you notify the bank touching those papers on April 4th?

A. It wasn't touching those papers. I wrote that myself and know just what was there. It was touching that release of Walter Baker Moore.

Q. Why didn't you say so?

A. It says so.

Q. Why did you say then "all agreement heretofore made with Walter Baker Moore, Frank Allan Moore, Margaret Gleason Moore, Miles C. Moore or A. E. Clark, their attorney, in regard to the litigation between myself and Walter Baker Moore, and together with the escrow agreement between myself and said parties."

A. Yes.

Q. "Said parties." That is Walter Baker—

A. (interrupting) Well, I don't pretend to —

Q. "And which was deposited with you on or about the 27th day of February, 1912, wherein you were to deliver certain papers—"

A. Yes.

Q. (continuing) to them and certain papers to me.

A. Yes.

Q. Now, why were you advising the bank that these agreements which the bank had nothing to do with and which you supposed all the time were in my possession until this morning, and concerning which you never knew there had been an escrow agreement —why were you notifying the bank you were rescinding those agreements and the escrow relating to them?

A. I wasn't rescinding the escrow—I was rescinding the escrow, in rescinding the agreement that I would deliver that release to Walter Baker Moore on the payment of that three thousand dollars.

Q. That is your only explanation is it of this matter?

A. That is the explanation I have.

Q. Did you write that yourself?

A. I wrote that myself.

Q. You are quite familiar with the legal forms of agreements and escrows, etc?

A. I ought to be after these years hanging around with this thing.

Q. You had in mind the whole situation when you wrote letters?

A. I had in mind that I had to cover the facts. There were agreements some place of Frank Allan Moore and Miles C. Moore. I was rescinding the agreements in that escrow in the bank. It was to prevent you and Mr. Stevenson from getting together and paying that three thousand dollars into the bank and taking out that release, when the whole settlement of the case depended, not on the six thousand dollars, but on the vindication of me by the Moore family.

Q. Now, you thought there was only one paper in escrow, that was your release?

A. Yes, but I didn't think that at that time because I knew—Mr. Stevenson had explained to me that the Walter Baker Moore vindicating affidavit was also there.

Q. What else was there?

A. I didn't know anything else.

Q. Now, you want the court to understand that up to this morning you knew nothing about any pa-

pers relating to Frank A. Moore being in that bank?

A. Yes.

Q. You want that understood.

A. That is as I understand it. I didn't know they were there.

Q. Were you present when this paper was dictated wherein it says that a release and acquittance, a duplicate original of which is hereto attached and signed by Miss Mary E. Cronen, is deposited in escrow with the Security Savings & Trust Company of Portland, Oregon, the duplicate original being your release of Frank, Margaret and Miles?

A. I don't know anything about that I didn't know that was necessary.

Q. And "upon delivery to the said Security Savings & Trust Company of a written statement signed by Frank Allan Moore and Margaret Gleason Moore in the following form, for delivery to John H. Stevenson or John F. Logan" such and such was to be done. Now, you say that was to come back in two days?

A. By return mail.

Q. By return mail?

A. That was the only thing I intended.

Q. Were you there when this was dictated and written into the agreement: "The release herein referred to"—that is the release of Frank A. Moore and his wife and Miles—"is to be delivered to A. E. Clark"—having been previously deposited with the Trust Company—"and the written statement aforesaid"—that is your vindication—"to the aforesaid at-

torneys"—that is Logan and Stevenson—"for Mary E. Cronen when said sum of three thousand was paid"—that is the back sum of three thousand—"and upon the failure to make such payment" the release is to go back to the attorneys for you and the vindication is to come back to me.

A. I never knew such a document existed.

Q. Now, Miss Cronen, as a matter of fact, when you signed that release—just refresh your memory—these both were prepared in Mr. Logan and Mr. Stevenson's office, weren't they?

A. I know the documents were prepared; I know that release of Frank Moore was prepared; I don't know when this other was.

Q. When you signed, refreshing your memory, don't you remember, before you signed this release of Frank Moore and his wife and Miles, this stipulation was fastened to it, just as it is now?

A. Positively no.

Q. And you insisted it should be so fastened in order that there should be no question about the release which was identified in this stipulation?

A. No, I don't know any such a thing at all.

Q. Do you want this court to understand that the release your attorneys signed was not the release dictated in your presence?

A. I don't know anything about that. I was not paying attention to legal documents. I was paying attention to the thing I wanted and asked for for a full year. I wanted those vindicating affidavits in my hands and wanted them when I signed the re-

lease, and I supposed they were in the office and you told me you couldn't arrange it now suitable to the Moores, and at the same time suitable to me—

Q. Miss Cronen, if you were to get the vindication in your hand when the papers were signed, why didn't you get it then, instead of leaving all the papers with your attorneys to go into the bank?

A. That is what I wanted.

Q. You signed the papers that day?

A. I signed them that day.

Q. All the papers were signed and the matter closed?

A. Yes.

Q. Did you ask for the Walter Baker Moore vindication that day?

A. I asked for it—was it in the evening or the morning?

Q. I mean that—

A. That time?

Q. Yes.

A. Why, yes, I did.

Q. Then why, if that was the understanding, were all the papers put in an envelope and left with your attorney?

A. Well, the escrow—the release and anything that pertained to the escrow, whatever legal documents—

Q. I am speaking of the vindication. If you were to have that in your hand at that moment, why didn't you get it?

A. I simply left that to Mr. Stevenson.

Q. Left them altogether?

A. Yes, and I went home, and I telephoned him early in the morning I must see him; for fear that would get into the escrow, I must see him before he turned it in, but he had already sent them in, but he said it was a matter of small importance. They said this thing will be straightened up in a few weeks anyway, why not let it wait? I said "I have been conceding and conceding and conceding for a full year and I am tired of it."

Q. When did you see Mr. Logan about the matter?

A. I didn't see Mr. Logan at all.

Q. When did you see Mr. Stevenson?

A. Monday morning. I won't say Monday morning. I was under the impression it was the next day, but the next day was Sunday so it must have been Monday.

Q. In the morning?

A. In the morning.

Q. What time?

A. I think about eleven o'clock.

Q. Had the papers already gone into escrow?

A. Mr. Stevenson said so. Said "Well, they have gone in."

Q. What did you say then?

A. Well, I was very much disappointed and was very much chagrined. I felt that I had been done and I told him so and we had a scene.

Q. Why did you think you had been done?

A. I wanted this thing in my hand and if it hadn't

been for that the case would have gone to trial.

Q. This then, was between you and the attorney. You wanted the vindication in your hands before complete—

A. Yes.

Q. (continuing) before complete settlement was made, and under the agreement the vindication was to come to you when the release came to us?

A. No.

Q. What is the difference between you and the attorneys now?

A. The difference between me and the attorneys was that they considered the case settled. I was granting them ninety days to pay the three thousand dollars, and we placed our release subject to three thousand dollars. That could have been any time in ninety days.

Q. What are you objecting to now about the settlement with Walter Baker Moore in this case?

A. Simply because I have made it a point always that the settlement of that case would be the vindication of me without further trouble, without further publicity, from the entire family, on that entire case. That you have told me in reply we can't settle but one case. I have said in reply I have the other cases and will file them.

Q. Let's get back to the Walter Baker Moore case. I want to know what you object to now—wherein you claim anything has been done which has been detrimental. Now, you have Walter's vindication, that is it has been in the bank waiting for you

for some time.

A. Yes.

Q. You got the three thousand dollars, didn't you?

A. Yes.

Q. You kept that?

A. Well, I told my attorneys at any time I would refund it to you.

Q. Where is it now?

A. It is in my possession.

Q. Where?

A. I am not telling you where.

Q. You haven't got three thousand dollars, have you?

A. How do you know?

Q. I am just asking you what did you do with that money?

A. What did I do with that money?

Q. What did you do with the Moore three thousand dollars. I want to show she has used it. (to Court.)

A. I have used it. I was to considerable expense. I paid fifteen thousand dollars expenses on the case.

Q. Fifteen thousand or fifteen hundred?

A. Well, that's no worse than your mistake when you put three hundred thousand in a written instrument. You must remember, I am here alone.

Q. I want to know what you did with that money?

A. Fifteen hundred to Mr. Logan and Stevenson, and fifteen hundred I paid in expenses of this case.

Q. Now then, as I understand it, you got three

thousand dollars?

A. Yes.

Q. The vindication which was agreed upon that day has been in the bank waiting for you?

A. Yes, but that was not settlement of that case.

Q. And you have had an opportunity to get that at any time;—the additional three thousand has also—

A. Yes.

Q. (continuing) been in the bank waiting for you?

A. Yes.

Q. So that as far as the Walter Baker Moore matter is concerned, the only thing you claim you should have was that the vindication should have been handed over to you the day—

A. No, you are quite mistaken. You always get off on that. You three men told me it was not legal to settle up three or four cases under the head of one, and I said "all right then, this one will go to trial and I will be vindicated by Walter Baker Moore on this case—will be vindicated from the defamation of character cases". And my attorneys kept saying it is useless notoriety; it wasn't the thing for a woman to go into; why not settle on this; and I said "All right, I don't want any more publicity; I have had plenty."

Q. What is it you say you haven't got you think you should get in any matters?

A. The thing I didn't get was the vindication from Frank Allan Moore, or his wife, at the time or any time within ninety days.

Q. Do you object to the form of the vindication?

A. I don't, no.

Q. You don't?

A. It is a very good form.

Q. You notified the bank that you had rescinded everything on April 4th?

A. Yes.

Q. Now you say that what you really object to is that you didn't get that vindication within ninety days?

A. No, I didn't say anything of the kind, I said by return mail, within a few days. Don't think you can tie me up like that for my heart is in this case, and you can't.

Q. Let's go back and see. Let's read the record.

COURT: You said ninety days; that is what you said. Perhaps you didn't mean it. If you didn't mean it, correct it.

A. What I meant to say is, you did not procure this within ninety days.

Q. Didn't procure within ninety days?

A. No.

Q. Are you objecting to that?

A. No, I don't object to that. What I object to is I did not get them as you promised by return mail.

Q. What you object to is you didn't get them by return mail. Did you expect, if it got back by return mail, it would be given immediately to you?

A. Surely.

Q. And the release of Frank delivered to me?

A. Surely.

Q. Without payment of the additional three thousand?

A. The payment of the additional three thousand had absolutely nothing to do with that—I am getting kind of mixed in my English.

Q. I don't want to mix you up.

A. The thing is this: On the payment of that three thousand dollars, you were entitled to the release that was lying in escrow, don't you see?

Q. I see.

A. Because that other vindication got accidentally put in there, it was tied up for ninety days. I objected to that at the time.

Q. I wanted one hundred and twenty; you wonted sixty, and we compromised on ninety.

A. I don't know anything about that. I left that to Mr. Logan.

Q. Let's get back to the Frank A. Moore matter. Then, as I understand it, getting right down now, you have eliminated a lot of these matters in controversy, apparently. The only thing then that you take exception to is this, apparently, that the Frank A. Moore and wife vindication did not come back as soon as you thought it should. That is, it didn't come back by return mail.

A. Well, the fact that they all laughed around the country, and Mr. Lee told it broadly and the boys told it broadly that they got a "cheap settlement because they had the goods on her." And every little while I went to the office "Have you heard?" "No, not yet, but be patient, they will come. They will come."

Now, on the 24th day of May, Mr. Logan asked me to come down to the office.

Q. Mr. Logan?

A. Mr. Logan in May. That was Saturday afternoon; the ninety days were up and he says: "The only way for you to get the vindication out of escrow is to go down and release the bank from that." I said "I am not going to take that. I don't want that." I told him what had been said about me; the vilest things that had been said about any woman, after they had all promised, and you had promised as their attorney.

Q. That is in the office that afternoon?

A. Yes.

Q. You are confining all your testimony touching me to that office—that occasion?

A. That afternoon.

Q. I never saw you after that?

A. No.

Q. Nor before?

A. But you promised, and you further told me that Miles C. Moore had confided to you that I was all I represented myself to be. I was a clean good woman, and it was the regret of his life that we didn't marry.

Q. When did I say that?

A. When Mr. Stevenson was out with his stenographer, and that moment Mr. Logan was entering the room.

Q. Anybody else there but you and I?

A. You and I, and you also told the same thing

to Mr. Stevenson, on another occasion. Do you remember that?

Q. No, I don't remember that at all. I do remember telling you that I never heard Governor Moore say a word against you. I say that now.

A. Yes, and do you remember your saying that he regretted it very much.

Q. No, I never said—I don't remember saying anything of that kind.

A. Do you remember saying that to anybody else?

Q. No, because it wouldn't agree with the facts.

A. Well, you are very harsh.

Q. I have a very distinct recollection of telling you and I tell you again that Miles C. Moore has never said a word to me detrimental to your character.

A. Well he couldn't. He couldn't and tell the truth.

Q. Then as I understand, the real trouble is you feel that the vindication of Frank should have been back within a couple of days, and not having done so, you have been wronged or deceived?

A. It isn't a matter of time at all. They went forth and said anything they wanted to say, and Mr. Lee as their agent, went down to San Francisco with the Oregon First Expedition, and in the Palace Hotel called a friend of mine out and said the vilest things after they had retracted the things and he has been their paid agent all the time. You know that.

Q. No, I don't know that. I know that is not true.

A. Who authorized him to bribe Mr. Stevenson with railway stock?

Q. I don't know. Some of Sidney Gordon's dreams, I suppose.

A. And it was a Sidney Gordon dream sending me to China, I suppose?

Q. I thing so.

A. You think so. You don't know anything about that intrigue to send me to China?

Q. No.

A. Do you know anything about taking me to Paris to seduce me and drop me?

Q. No, I don't. Now what else? We have heard about going to China and an intrigue to take you to Paris for seductive purposes?

A. No, I was to go on a case. I was to take Mrs. Jordon traveling around the world?

Q. Mrs. Jordon?

A. Yes.

Mr. NOLAN: That line of testimony is entirely outside.

Mr. CLARK: I didn't bring it out.

COURT: That has nothing to do with this case.

Q. What are you objecting to?

A. I am objecting to the fact that it was not turned over to me and I was not able to vindicate myself, and put those things on record and refer my friends and people to those things at the time that settlement was made.

Q. You say time was not of any particular consequence to you but what you want is the vindication.

A. I see I have to be very particular what I say here.

Q. What I want is the fact, Miss Cronen.

A. The fact is this: I object to your not delivering this by return mail as you said you would, or within a few days afterwards. That would have been all right. Not wait until the 29th day of February. I wanted to have this on record when my attorneys came to the courtroom and said the case was called off. I wanted to show that as a part of my statement, instead of their going around the country saying they got a cheap settlement. "We had the goods on her and she had to do that." You haven't got the goods on me.

Q. Who said that?

A. Walter Baker Moore said that. Miles C. Moore said that and Frank said it.

Q. Who did he say it to?

A. That is some of my evidence; I know.

Q. Well, you said he said it.

A. He said it.

Q. Who did Miles C. Moore say that to?

Mr. NOLAN: That is outside of the case.

Mr. CLARK: I don't think the witness should bring that up. That is all.

A. Here is a thing I want to tell you. You have a man named Parker, not more than two weeks ago—

COURT: Never mind that.

Redirect Examination.

Q. Where were Frank A. Moore and Margaret Gleason Moore at the time this statement was made?

A. I don't know, but I think in Walla Walla.

Q. You spoke about return mail. How long would it take in the ordinary course of affairs for mail to go to Walla Walla and back?

A. I don't know; two days or three probably.

Witness excused.

Defense rests.

JOHN H. STEVENSON, recalled in rebuttal.

Direct Examination.

Questions by Mr. CLARK:

Mr. Stevenson, you have heard the testimony of Miss Cronen, to the effect that this Exhibit 5 is not the paper that was dictated, prepared and signed in your office on February 24th. I ask you what is the fact about it?

A. This is the paper, yes.

Q Is that the form of vindication agreed upon at that time?

A. The form as agreed upon that day, yes.

Q. There was no substitution of any paper for the one that was prepared that day?

A. If there was, it was done in the bank.

Q. What?

A. If there was a substitution, it was done in the bank, after it left my possession.

Q. That is your signature?

A. That is my signature.

Q. That is your office paper?

A. That is the office paper, yes, sir.

Witness excused.

JOHN F. LOGAN, recalled in rebuttal.

Direct Examination.

Questions by Mr. CLARK:

Mr. Logan, you heard the testimony of Miss Cronen, touching this paper, Exhibit 5. State whether or not that is the paper prepared in your office that day?

A. That contains in substance the paper that was signed that day.

Q. What do you mean by "contains in substance the paper"?

A. If I remember anything, I remember that that was the paper.

Q. Your office made no substitution?

A. Oh, no.

Q. That is on your office paper?

A. Yes.

Q. Written by your stenographer?

A. Yes. A boy or young man, I think. I am not sure. I forget the—when that was to be returned. I didn't remember that the 90 days was in there; that is, the 90 day clause was in there; but it was to be turned over when the money, when everything was settled.

Q. Did you hear anything to the effect that these vindications were to be delivered forthwith, or weren't all the papers to be interchanged at the same time?

A. Oh yes, everything was to be interchanged at the same time. The notion I got, and I got the im-

pression from somebody, Lee or yourself, the $6,000 could be paid practically at any moment.

Q. I think I told you I would endeavor to get it within ten days or two weeks.

A. Yes, there is where the two weeks came in—the whole thing in two weeks.

Q. I hoped to be able to settle within two weeks. But didn't for five or six weeks.

A. It was within two weeks; I remember distinctly Miss Cronen was insistent about when it was to come down, and you, out of an abundance of caution, to give plenty of time for the paper to go up to Frank Allan Moore and back—the reason why they left out the Governor, was because this vindication would delay the final settlement, and Miss Cronen—

Q. I suggested if he was coming in, we should take 120 days.

A. And Miss Cronen was so insistent on getting a final vindication, she let him go, and we got the impression it was to be two weeks, was to be in a reasonable time; and out of an abundance of caution you took 90 days to get them back.

Q. Everything was to be settled at one time?

A. Yes, but she got the impression, and that is where I was—I will know better next time—she got the impression was to come back within two weeks. Now, the matter of the trouble afterwards, the accusation afterwards—

Q. I don't care for that.

A. She brought that to the office, and I am aware that is what caused the young woman to make trou-

ble afterwards.

Q. I don't care anything about that, and I regret very much if any such thing occurred. No one regrets it more than I.

A. I think it my duty to state that Miss Cronen called up the fact they might traduce us afterwards, and it was the legal opinion that it was outside of the case. You and I and Mr. Stevenson agreed that what they might do in the future was something outside of this case. Five minutes after they signed these vindications, they could turn around and repeat what they said, and that would be a subsequent case in itself. We couldn't settle it at that time. That was our legal opinion—a matter outside of the case.

Q. You took the opinion that nothing was settled subsequent to February 24th?

A. That is exactly it, what they might do in the future would have nothing to do with this case, and it would have to be a subsequent case against any one who might traduce her character thereafter. That is what our opinion was, but these papers were to come back in a reasonable time, and that reasonable time was before the trial, and that reasonable time was two weeks. But there was nothing contractual.

Witness excused.

V. R. LISMAN, a witness called on behalf of the plaintiff in rebuttal, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. CLARK:

Mr. Lisman, on February 24, 1912, where were you

employed?

A. Mr. Logan's office, Logan & Stevenson.

Q. Do you recall that I was in the office on the afternoon of that day?

A. Yes, sir.

Q. And did you—in what room did you see me?

A. Mr. Stevenson's room.

Q. And did you see Miss Cronen there, this lady sitting at the table?

A. Yes, sir.

Q. And Mr. Logan was there, Mr. Stevenson was there?

A. Yes, sir.

Q. While we were all there, were you called in and certain papers dictated to you?

A. Yes, sir.

Q. Where were the papers dictated?

A. Mr. Stevenson's room.

Q. You sat at the table in his room?

A. Yes, sir.

Q. And do you know whether or not the rest of us were sitting around the table close by?

A. Yes, sir, you were all.

Q. Miss Cronen was in the room when the dictation occurred?

A. Yes, sir.

Q. And you thereafter transcribed the dictation?

A. I did.

Q. And having reduced it to writing, what did you do with it?

A. I think I gave it to Mr. Stevenson.

Q. Brought it back into his room?

A. Yes, sir.

Q. I show you a paper marked Exhibit 5, and ask you whether or not that is the document transcribed from the dictation which you received at the time in question?

A. That is the one.

Q. And did you write the second document there, the second release also at the same time?

A. Yes, sir.

Q. Now, was more than one document dictated to you touching this matter at that time? I mean of this character—this stipulation?

A. Not that day.

Q. Is that a true transcription of the notes which you received at the time of the dictation taken in Miss Cronen's presence?

A. Yes, sir.

Witness excused.

Plaintiff rests.

Defense rests.

[Endorsed]: Transcript of Testimony. Filed Feb. 19, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 6 day of March, 1913, there was duly filed in said Court, a Petition for Appeal in words and figures as follows, to wit:

[Petition for Appeal.]

In the District Court of the United States for the District of Oregon.

WALTER BAKER MOORE,

Plaintiff,

vs.

MARY E. CRONEN, and SECURITY SAVINGS & TRUST COMPANY, a Corporation,

Defendants.

The above named defendant, Mary E. Cronen, conceiving herself aggrieved by the decree made and entered herein on Septembr 9th, 1912, finding for plaintiff and against the defendant, hereby appeals from the said decree to the United States Circuit Court of Appeals for the Ninth District; and files herein her assignment of errors asserted and intended to be urged on appeal.

The defendant prays for an order of this Court staying all further proceedings upon the said decree pending this appeal, upon defendant giving a good and sufficient bond to be approved by this Court.

STOTT & COLLIER,
Attorneys for Defendant,
Mary E. Cronen.

[Endorsed]: Petition for Appeal. Filed March 6, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 6 day of March, 1913, there was duly filed in said Court, an Order Al-

lowing Appeal in words and figures as follows, to wit:

[Order Allowing Appeal.]

In the District Court of the United States for the District of Oregon.

WALTER BAKER MOORE,

Plaintiff,

vs.

MARY E. CRONEN, and SECURITY SAVINGS & TRUST COMPANY, a Corporation,

Defendants.

Having considered the defendant Mary E. Cronen's Petition for allowance of appeal and supersedeas from the Decree made and entered herein on September 9th, 1912, together with the assignment of errors, upon motion of E. P. Stott of Attorneys for Defendant, Mary E. Cronen, the appeal of defendant is allowed as prayed, upon giving a bond in the sum of $1000.00 to be approved by this Court; which bond shall operate as a supersedeas from the date of its approval, and that the clerk of this court shall hold said sum of $2935.20 paid into court for the benefit of defendant until further order of court.

Dated March 6, 1913.

R. S. BEAN,
Judge.

[Endorsed]: Order Allowing Appeal. Filed Mar. 6, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 6 day of March, 1913, there was duly filed in said Court, a Bond on Appeal in words and figures as follows, to wit:

[Bond on Appeal.]

In the District Court of the United States for the District of Oregon.

WALTER BAKER MOORE,

Plaintiff,

vs.

MARY E. CRONEN, and SECURITY SAVINGS & TRUST COMPANY, a Corporation,

Defendants.

United States Fidelity and Guaranty Company of Baltimore, Md., Surety, is held and firmly bound unto Walter Baker Moore, complainant above named, in the sum of $1000.00 to be paid unto the said complainant; for the payment of which, well and truly to be made, said United States Fidelity and Guaranty Company, and its successors and assigns, binds itself and its successors and assigns forever firmly by these presents. The defendant, Mary E. Cronen above named, has been allowed an appeal to the United States Circuit Court of Appeals for the Ninth District and supersedeas from the decree entered in the above entitled suit on September 9th, 1912; and the condition of this obligation is that if the said defendant, Mary E. Cronen, shall prosecute her appeal to effect and answer the costs taxed in the decree appaled from, together with all damages, interests and cost of such appeal and supersedeas; if she, Mary E.

Cronen, defendant, fails to make her said appeal good, then this obligation to be void, otherwise to remain in full force.

Signed, sealed and delivered this 6th day of March, 1913.

MARY E. CRONEN,
THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
[Seal] By DOUGLAS R. TATE,
Its Attorney in Fact.

The foregoing bond approved on March 6, 1913.

R. S. BEAN,
Judge.

[Endorsed]: Bond. Filed Mar. 6, 1913.
A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 6 day of March, 1913, there was duly filed in said Court, Assignments of Error in words and figures as follows, to wit:

[Assignments of Error.]

In the District Court of the United States for the District of Oregon.

WALTER BAKER MOORE,
Plaintiff,
vs.
MARY E. CRONEN, and SECURITY SAVINGS & TRUST COMPANY, a Corporation,
Defendants.

In connection with its petition for allowance of appeal herein, defendant Mary E. Cronen makes and

files this assignment of errors made by the Court in its decree entered hereby on September 9th, 1912.

I.

The Court sitting as a Court of equity erred in assuming jurisdiction over and rendering a decree in the above entitled cause, for the reason that the cause of action, if any, shown by the bill of complaint is at law; and the Court is, and at all times was wholly without jurisdiction of the subject matter.

II.

The Court erred in not dismissing complainant's bill for no equity shown.

III.

The Court erred in deciding or adjudging that the attorney for defendant Mary E. Cronen, had authority as agents, or otherwise, to enter into a contract for and on behalf of defendant Mary E. Cronen with Walter Baker Moore the plaintiff herein, or with his duly authorized agent or agents.

IV.

The Court erred in deciding or adjudging that a contract was made and entered into by and between plaintiff Walter Baker Moore and defendant Mary E. Cronen, acting by their respective attorneys.

V.

The Court erred in deciding or adjudging that defendant Mary E. Cronen could not rescind the alleged contract the above entitled Court has adjudged was entered into by and between Walter Baker Moore, the plaintiff herein, and Mary E. Cronen defendant herein, acting by their respective attorneys.

VI.

The Court erred in deciding or adjudging that Walter Baker Moore the plaintiff herein had performed the part of the alleged contract incumbent upon him to be performed by the terms of said alleged contract.

VII.

The above entitled Court erred in rendering any decree in said cause other than a decree dismissing the plaintiff's complaint in equity.

VIII.

The above entitled Court erred in not rendering a decree dismissing the complaint in equity herein.

WHEREFORE defendant prays that the decree herein be reversed and that plaintiff's bill be dismissed.

STOTT & COLLIER,
Attorneys for Defendant
Mary E. Cronen.

[Endorsed]: Assignment of Errors. Filed Mar. 6, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 5 day of April, 1913, there was duly filed in said Court, a Citation on Appeal in words and figures as follows, to wit:

[Citation on Appeal.]

UNITED STATES OF AMERICA,
DISTRICT OF OREGON.—ss.

To WALTER BAKER MOORE, plaintiff, and A. E. CLARK, his attorney, Greeting:

WHEREAS, Mary E. Cronen has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the District Court of the United States for the District of Oregon, in your favor, and has given the security required by law; You are, therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 4th day of April in the year of our Lord, one thousand, nine hundred and thirteen.

CHAS. E. WOLVERTON,
Judge.

[Endorsed]: Citation on Appeal. Filed Apr. 5, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 25 day of March, 1913, there was duly filed in said Court, an Order to Reproduce Evidence in words and figures as follows, to wit:

[Order to Reproduce Evidence.]

In the District Court of the United States for the District of Oregon.

WALTER BAKER MOORE,

Plaintiff,

vs.

MARY E. CRONEN and SECURITY SAVINGS & TRUST COMPANY, a Corporation,

Defendants.

The above entitled cause now coming on to be heard on the stipulation of plaintiff and defendant, Mary E. Cronen for an order of the above entitled court re-producing in the appeal of this cause to the United States Circuit Court of Appeals for the Ninth District the testimony adduced at the time of the trial of said cause in the above entitled court in its entirety, and in the exact words of the witnesses.

And it further appearing to the court that it is necessary and essential in the appeal of said cause that the testimony be re-produced in its entirety and in the exact words of the witnesses.

It is therefore Ordered and Adjudged that the testimony adduced at the time of the trial of this cause in the District Court of the United States for the District of Oregon be, on the appeal of said cause, reproduced in its entirety in the exact words of the witnesses.

CHAS. E. WOLVERTON,

Judge.

Dated this 25 day of March, 1913.

WHEREAS, Mary E. Cronen has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the District Court of the United States for the District of Oregon, in your favor, and has given the security required by law; You are, therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 4th day of April in the year of our Lord, one thousand, nine hundred and thirteen.

CHAS. E. WOLVERTON,

Judge.

[Endorsed]: Citation on Appeal. Filed Apr. 5, 1913.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on the 25 day of March, 1913, there was duly filed in said Court, an Order to Reproduce Evidence in words and figures as follows, to wit:

[Order to Reproduce Evidence.]

In the District Court of the United States for the District of Oregon.

WALTER BAKER MOORE,

Plaintiff,

vs.

MARY E. CRONEN and SECURITY SAVINGS & TRUST COMPANY, a Corporation,

Defendants.

The above entitled cause now coming on to be heard on the stipulation of plaintiff and defendant, Mary E. Cronen for an order of the above entitled court re-producing in the appeal of this cause to the United States Circuit Court of Appeals for the Ninth District the testimony adduced at the time of the trial of said cause in the above entitled court in its entirety, and in the exact words of the witnesses.

And it further appearing to the court that it is necessary and essential in the appeal of said cause that the testimony be re-produced in its entirety and in the exact words of the witnesses.

It is therefore Ordered and Adjudged that the testimony adduced at the time of the trial of this cause in the District Court of the United States for the District of Oregon be, on the appeal of said cause, reproduced in its entirety in the exact words of the witnesses.

CHAS. E. WOLVERTON,

Judge.

Dated this 25 day of March, 1913.

[Endorsed]: Order. Filed March 25, 1913.
A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on Saturday, the 5 day of April, 1913, the same being the .....Judicial day of the Regular March 1913 Term of said Court; Present: the Honorable CHAS. E. WOLVERTON, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Order Enlarging Time to File Transcript.]

In the District Court of the United States for the District of Oregon.

No. 5689.

April 5, 1913.

WALTER BAKER MOORE,
Plaintiff,

vs.

MARY E. CRONEN, et al,
Defendants.

Now, at this day, for good cause shown, it is Ordered that the defendants' time for filing and docketing the record on appeal in this cause, in the United States Circuit Court of Appeals, Ninth Circuit, be and the same is hereby enlarged and extended ninety (90) days from this date.

CHAS. E. WOLVERTON,
District Judge.

IN THE

United States Circuit Court of Appeals

NINTH DISTRICT

MARY E. CRONEN,

Appellant,

vs.

WALTER BAKER MOORE,
Appellee.

BRIEF OF APPELLANT

Upon Appeal from the United States District Court for the District of Oregon.

Hon. R. S. Bean, Judge

STATEMENT.

On July 17, 1912, the appellee filed in the District Court of the United States for the District of Oregon his Bill of Complaint against the appellant seeking to compel the specific performance on the part of the appellant

of a certain agreement entered into by appellee and appellant acting through their respective attorneys.

Prior to the execution of said agreement referred to in appellee's complaint and appellant's answer thereto, there had existed between appellee and appellant a promise of marriage, which had been broken by Walter Baker Moore, appellee herein, and a suit was pending in the District Court of the United States for the District of Oregon in which Mary E. Cronen, appellant herein, sought the recovery of damages for the breach of promise on the part of Walter Baker Moore. The suit for the breach of promise was at issue and set for trial in said Court on the 29th day of February, 1912. Negotiations had been opened between A. E. Clark, acting as attorney for the appellee herein and John F. Logan and John H. Stevenson, acting as attorneys for the appellant herein, for a settlement of the suit started by Mary E. Cronen against Walter Baker Moore. Such negotiations looking to the settlement of the suit for breach of promise had been continued and pending for several months just previous to the execution of the agreement above referred to. On February 24, 1912, the parties thought they had arrived at such settlement. Accordingly the aforesaid attorneys and appellant met in the office of John H. Stevenson, in Portland, Oregon, to perfect the terms of the settlement. Under the terms of this settlement appellant was to receive from appellee the sum of $6000.00 and to dismiss her suit for the breach of promise and to execute and deliver to appellee a full release and discharge of all her claims and demands of whatsoever nature against him. In addition appellee was to deliver to Miss Cronen a statement of the high moral character of appellant.

It has been contended by the appellant herein that at the time the promise of marriage existed between the appellee and appellant and after the same had been broken by appellee, that the family of Walter Baker Moore,—principally his brother Frank Allen Moore and the wife of Frank Allen Moore and the father, Miles C. Moore,—had made certain statements assailing the good, moral character and chastity of this appellant. At this meeting of the attorneys and appellant on February 24, 1912, appellant demanded that a signed statement by Mr. and Mrs. Frank Allen Moore be delivered to her vindicating her of such charges of unchastity and certifying to her high standard of moral character. It was agreed by the attorney for appellee that such statement would be executed and delivered to appellant.

At this same meeting of the attorneys and appellant above referred to it was found inconvenient and impossible to perfect a full and complete settlement of the controversy in accordance with the terms agreed upon on that day. However, it was on that day further agreed, that there be placed in escrow with the Security Savings & Trust Company of Portland, Oregon, (1) a stipulation for the dismissal by appellant of her suit for breach of promise; (2) release and discharge of Walter Baker Moore by Mary E. Cronen of all claims and demands against Walter Baker Moore, and (3) a statement signed by Walter Baker Moore certifying to the good, moral character of appellant. A letter of instruction dated February 24, 1912, and signed by John H. Stevenson as attorney for appellant, and A. E. Clark, as attorney for appellee, was directed to the said Security Savings & Trust Company. A copy of said letter of instruction appears on page 49 of the Transcript of

Record and is marked "Plaintiff's Exhibit I." Accompanying such letter of instruction were the (1) stipulation, (2) release and (3) statement agreed to be placed in escrow, copies of which appear on pages 50, 51 and 52, respectively, of the Transcript of Record and are marked "Plaintiff's Exhibit 2," "Plaintiff's Exhibit 3" and "Plaintiff's Exhibit 4," respectively. By the terms of this escrow agreement, as will more fully appear by reference to the above mentioned letter of instruction, $3000.00 of the $6000.00 agreed to be paid appellant was paid to her at the time the agreement was made, and the additional $3000.00 was to be paid within 90 days from date, or May 24, 1912. Upon the payment of said additional $3000.00 within the 90 days the Security Savings and Trust Company was to deliver to appellee the stipulation and release accompanying the letter of instruction, and the statement of vindication signed by Walter Baker Moore was to be delivered to the appellant.

At the meeting of the attorneys and appellant above referred to Miss Cronen, the appellant, demanded that a statement of vindication of the charges made against her be signed by Mr. and Mrs. Frank Allen Moore and delivered to her. And because of the degratory statements assailing the appellant's character, which were alleged to have been made by the family of Walter Baker Moore, appellee, such signed statement was to be forthwith delivered to appellant. Thereupon a stipulation was at this time entered into between John H. Stevenson acting as attorney for Mary E. Cronen, and A. E. Clark, acting as attorney for Walter Baker Moore, whereby upon the delivery to the said Security Savings and Trust Company Bank of a written statement, signed

by Frank Allen Moore and Margaret Gleason Moore, certifying to the moral character of Mary E. Cronen, this appellant was to cause to be delivered to appellee a release of all claims and demands that she may have against Frank Allen Moore and Margaret Gleason Moore and Miles C. Moore. A copy of which stipulation appears in the Transcript of Record on page 61 and is market "Plaintiff's Exhibit 5," and a copy of which release appears in the Transcript of Record on page 63 and is marked "Plaintiff's Exhibit 6."

At the time of the execution of the stipulation last referred to and marked "Plaintiff's Exhibit 5," it was understood that such statement signed by Frank Allen Moore and Margaret Gleason Moore was to be delivered to this appellant as soon as such could be drafted and mailed to Walla Walla, Washington, for the signature of Frank Allen Moore and Margaret Gleason Moore and then returned, and a space of two weeks was agreed in which to make such delivery of the statement to appellant. No such statement was delivered or tendered appellant in accordance with the terms of the agreement and on April 4, 1912, appellant wrote the Security Savings and Trust Company a letter rescinding and cancelling all agreements heretofore made with Walter Baker Moore or his attorney in regard to the controversy between Walter Baker Moore and herself. A copy of which letter appears on page 109 of the Transcript Record and is marked "Plaintiff's Exhibit 8."

In explanation, it will be observed from the foregoing statement of the facts in this case that appellant for a consideration of $6000.00 and the delivery to her of a statement of her good moral character, signed by ap-

pellee, was to release appellee from all claims and demands against him and dismiss her suit for the breach of promise. A limit of 90 days from the execution of the escrow agreement was placed upon the fulfillment of this part of the agreement. In further explanation, it will be observed that appellant's attorney and the attorney for the family of appellee entered into a stipulation at the same time and place whereby appellant was to release Frank Allen Moore, Margaret Gleason Moore and Miles C. Moore from all claims and demands against them upon the delivery to appellant of a statement signed by Frank Allen Moore and Margaret Gleason Moore certifying to her high moral character.

It is our contention that the statement last referred to was to be delivered immediately or at the outside within a space of two weeks from the time such stipulation was entered into. It is also our contention that such statement was not delivered in accordance with the terms of the agreement and that such was never delivered or a tender of delivery ever made prior to the trial of this suit, and because such was not delivered in accordance with the terms of the agreement, we claim that the Court erred in granting the relief to appellee prayed for in his complaint.

It is our further contention that the stipulation calling for the payment of the $6000.00 and the delivery of the statement by Walter Baker Moore to appellant in exchange for her discharge of appellee and the dismissal of the suit against him, and also the stipulation calling for the delivery of the statement signed by Frank Allen Moore and Margaret Gleason Moore in exchange for their discharge by appellant formed one and

the same escrow agreement. In other words, that the two stipulations went to make up a part of the agreement for the settlement of the controversy between appellant and appellee, and that a fulfillment of the contract was only made when all the terms embodied in the two stipulations and the letter of instruction to the Security Savings and Trust Company had been complied with. The decree of the trial Court was erroneous in failing to decree the delivery of the statement signed by Frank Allen Moore and Margaret Gleason Moore to this appellant in exchange for her release of all claims against them, as agreed to in the stipulation shown on page 61 of the Transcript of Record.

ASSIGNMENT OF ERRORS.

The appellant has assigned and does assign as errors committed by the Court and apparent on the face of the record, the following, to-wit:

I.

The Court sitting as a Court of Equity erred in assuming jurisdiction over and rendering a decree in the above entitled cause, for the reason that the cause of action, if any, shown by the bill of complaint is at law; and the Court is, and at all times was wholly without jurisdiction of the subject matter.

II.

The Court erred in not dismissing complainant's bill for no equity shown.

III.

The Court erred in deciding or adjudging that the attorney for defendant Mary E. Cronen, had authority as agents, or otherwise, to enter into a contract for and on behalf of defendant Mary E. Cronen with Walter Baker Moore the plaintiff herein, or with his duly authorized agent or agents.

IV.

The Court erred in deciding or adjudging that a contract was made and entered into by and between plaintiff Walter Baker Moore and defendant Mary E. Cronen, acting by their respective attorneys.

V.

The Court erred in deciding or adjudging that defendant Mary E. Cronen could not rescind the alleged contract the above entitled Court has adjudged was entered into by and between Walter Baker Moore, the plaintiff herein, and Mary E. Cronen defendant herein, acting by their respective attorneys?

VI.

The Court erred in deciding or adjudging that Walter Baker Moore the plaintiff herein had performed the part of the alleged contract incumbent upon him to be performed by the terms of said alleged contract.

VII.

The above entitled Court erred in rendering any de-

cree in said cause other than a decree dismissing the plaintiff's complaint in equity.

VIII.

The above entitled Court erred in not rendering a decree dismissing the complaint in equity herein.

POINTS AND AUTHORITIES.

I.

The escrow agreement may be partly written and partly oral.

Campbell v. Thomas, 42 Wis. 437.

Stanton et al v. Miller et al, 58 N. Y. 202.

Gaston v. City of Portland, 16 Oregon 255.

II.

Time may be made of the essence of the contract by the express stipulation of the parties, or, without such express agreement, by the nature of the contract itself, or of the circumstances under which it was made.

Gale and Gale v. Archer, 42 Barbour (N. Y.) 320.

Quinn v. Roath, 37 Conn. 16.

Taylor v. Longworth, 39 Peters (U. S.) 70.

Ewing v. Crouse, 6 Ind. 312.

Hull Coke & Coal Co. v. Empire Coal & Coke Co., 113 Federal 256.

III.

Failure of the plaintiff to make good his representations as to future acts to be performed by him, and which were a material inducement to defendant to enter into the contract, constitutes a defense to specific performance, although the representations were no part of the contract, and although there is no doubt as to plaintiff's legal right under the contract.

Beaumont v. Dukes, Jac. 422, 23 Rev. Rep. 110, 4 Eng. Ch. 422, 37 Eng. Reprint 400.

Vol. 36, Cyclopedia of Law and Procedure 700.

IV.

The entirety of a contract depends upon the intention of the parties and not the divisibility of the subject.

Shinn v. Bodine, 60 Pa. St. 182.

Pope v. Porter, 102 N. Y. 366.

Norrington v. Wright, 115 U. S. 188.

Clark v. Wheeling, 53 Federal 494.

V.

Where two or more written instruments are executed on the same day, relate to the same subject matter, and one refers to the other, the presumption is that they evidence but a single contract.

Byrne v. Marshall, 44 Ala. 355.

Sewall v. Henry, 9 Ala. 24.

Vangine et al v. Taylor, 18 Ark. 65.

Rogers et al v. Kneeland, 13 Wend. (N. Y.) 116.

Vol. 9, Cyclopedia of Law and Procedure, 580-581.

VI.

The decree must conform to the contract.

Bennett v. Giles, 111 Ill. App. 428.

Freeburgh v. Lamoureux, 15 Wyo. 22.

26 Am. Eng. Enc. of Law, 66 (2nd Ed.)

20 Ency. of Pleading & Practice, 496.

Giplin v. Watts, 1 Colo| 479.

VII.

Specific performance is an equitable remedy, which compels the performance of a contract in the precise terms agreed upon, or such a substantial performance as will do justice to the parties under the circumstances of the case.

Stoddard v. Hart, 23 N. Y. 556.

Rison v. Newberry, 90 Va. 521.

Owens v. Hall, 13 Ohio St. 571.

Freeburgh v. Lamoureus, 15 Wyo. 22.

Vol. 22 Am. & Eng. Ency, of Law 909 (1st Ed.)

IX.

The defendant may have specific performance of the version of the contract as set up and proved.

Thompson v. Hawley, 14 Oreg. 199.

Garrett v. Goff, 61 W. Va. 221.

Bradford v. Union Bank of Tennessee, 13 How. (N. Y.) 69.

X.

In a suit for specific performance the defendant has a right to plead in his answer, as new matter, a contract different from the one alleged in the complaint, and the Court will then ascertain from the evidence which was the real contract.

Thompson v. Hawley, 14 Oreg. 199.

XI.

The judgment in equity cases is not controlled by the prayer for relief.

Gilmore v. Gilmore, 7 Oregon 374.

State v. Tooker, 46 Pac. 33.

Davis v. Davis, 23 Pac. 715.

Polk v. Wendall, 9 Cranch. 87.

Century Digest, Vol. 19, Equity, 1005.

ARGUMENT.

Our contention in this case is, that the appellee was not entitled to his decree for specific performance obtained in the trial Court. The main propositions involved in the case, briefly stated, are as follows, namely: (1) Within what time, if any, the terms of the escrow

agreement were to be fully performed upon the part of the appellee; and (2) was the time in which the terms of such escrow agreement were to be performed of the essence of the contract; and (3) did the appellee make performance, or tender of performance, within such time; and (4) did the non-performance, or tender of performance, on the part of the appellee, within that time work a forfeiture of any right the appellee may have had under the contract.

In our argument we hold that there was a time in which the terms of the escrow agreement were to be fully performed on the part of the appellee, and that such time was of the essence of the contract, and that the appellee failed to make performance, or tender of performance, within such time, and that the non-performance, or tender of performance, on the part of the appellee within that time deprived him of any right to the relief sought in his complaint.

A further point of argument urged by appellant is, that the two stipulations were a part of the escrow agreement and the terms of the same taken together formed a contract of entirety. If the appellee was entitled to his decree for specific performance at all, such decree should have been one enforcing the full terms of the escrow agreement and the Court was without power to grant only a partial performance thereof, and that it was error to grant a decree which compelled only partial performance.

In discussing the propositions mentioned we have deemed it necesary that due regard be had at all times for the facts and circumstances surrounding and enter-

ing into the execution of the escrow agreement between the parties. For it will be seen that appellant by the escrow agreement was not only to release Walter Baker Moore, appellee, from all claims and demands against him, but was to also release certain members of appellee's family from all claims and demands against them. It was the things which formed the attendant circumstances surrounding the execution of the escrow agreement and from which the appellant wished to be freed and vindicated of, that actuated appellant in consenting to give the release of the appellee's family.

THE ESCROW AGREEMENT MAY BE PARTLY WRITTEN AND PARTLY ORAL.

We contend that the agreements made at the meeting of the appellant and the attorneys for appellant and appellee on February 24, 1912, formed one and the same contract. We further contend that there is no question but what some of the terms of this agreement as mentioned in the letter of instruction to the Security Savings and Trust Company (Plaintiff's Exhibit I'' Transcript of Record, page 49), were to be fully performed and complied with within 90 days, or by May 24, 1912. The stipulation (''Plaintiff's Exhibit 5'' Transcript of Record, page 61) entered into between the attorneys representing the respective parties calls for the delivery by appllee of a statement of the good moral character of appellant, signed by Frank Allen Moore and Margaret Gleason Moore, to the Security Savings and Trust Company and the surrender by the Security Savings and Trust Company, upon the delivery of the same, of a full release by Mary E. Cronen of Frank Allen Moore, Mar-

garet Gleason Moore and Miles C. Moore of all claims and demands against them. The time in which this statement, last referred to, was to be delivered, is a question in dispute.

As mentioned in our STATEMENT, of the facts and circumstances surrounding the execution of the escrow agreement, Mary E. Cronen, appellant herein, claimed that certain statements had been made by the family of appellee imputing unchastity to her and attacking her moral character. Her claim was well known to the attorney for the appellee. (Transcript of Record, pages 118 and 125). The testimony shows clearly that her suit for the breach of promise was commenced for other reasons than the mere obtaining of a money judgment. (Transcript of Record, pages 96 and 101). She was a good woman. Had entered into this promise of marriage with appellee in good faith and sincerity. Had told her friends that she was about to be married to appellee, and she was looking forward to the event with joyful satisfaction. The date of the marriage was postponed and finally the appellee refused to marry her at all. The family of the appellee had spread broadcast among the friends and acquaintances of appellant charges imputing to her unchastity and immoral conduct. It was with shame that she faced her own people and her friends. She became almost an outcast because of these unwarranted statements made for the purpose of breaking off the engagement. It was from the stigma of these false charges that this poor woman was suffering, and not from the fact that her engagement was broken, and not for the want of money damages to sooth her. She wanted to be vindicated of these untrue state-

ments. She wanted her friends and associates to know that such statements were false. She wanted that good name back. This was the moving cause and the one essential thing entering into the execution of the escrow agreement on her part. Her suit for breach of promise was to be tried within five days of the time this agreement was made. She had hoped that within five or six days the result of that suit would be such as to enable her to go to her own people and her friends and say to them that these charges were untrue and groundless. With the obtaining of this vindication of the charges made against her uppermost in her mind, can it be said that she entered into this agreement with no understanding as to when such statement of vindication was to be made and delivered to her? Can it be said that she was willing that such statement of vindication was to be delivered to her at the convenience of the appellee? And keeping in mind her anxiety and insistence upon having this statement, and keeping in mind the fact that within five or six days the testimony produced at the trial of the suit for breach of promise would in itself show the falsity of these charges, can it be said she was willing that appellee should have 90 days, as claimed by appellee, in which to deliver to her the statement of her good moral character, when such could be obtained almost immediately, or at the outside within a space of two weeks? We repeat again that what this appellant wanted all through the negotiations for a settlement of her suit was a vindication of the charges made against her. She did not want to wait indefinitely for this—she did not want to wait longer than it was absolutely necessary. It was only right to presume that when her suit for breach of promise was

heard, if the appellee had any proof of the charges made against her, he would produce it at such trial. That then and there Frank Allen Moore and Margaret Gleason Moore and Miles C. Moore would testify or not testify to such charges. And we say again, the appellant knew that within five or six days from the time the escrow agreement was made, that the result of the trial would be such as she could or she could not go to her friends and people and say to them that the charges were untrue and malicious lies.

With these facts and circumstances surrounding and entering into the execution of the escrow agreement, what then was the understanding as to when the statement of vindication signed by Frank Allen Moore and Margaret Gleason Moore was to be delivered to appellant? We claim that such was to be delivered within two weeks. It is true, as evidenced by the letter of instruction to the Security Savings and Trust Company (Transcript of Record, page 49, the additional $3000.00 and stipulation and release and statement therein mentioned were to be all delivered within a space of 90 days. But why was the limitation of 90 days placed upon this part of the agreement? The testimony on page 101 of the Transcript of Record clearly indicates that it was for the purpose of securing the additional $3000.00 to be paid to appellant, and not for the purpose of carrying out any of the other terms of the agreement. It was not going to take 90 days to get the statement signed by Frank Allen Moore and wife returned to appellant. True it is that the stipulation ("Plaintiff's Exhibit 5" Transcript of Record, pages 61 and 62), entered into February 24, 1912, calling for the delivery of

such statement of Frank Allen Moore and Margaret Gleason Moore and the release by appellant, reads, in part, as follows, to-wit:

> "The release herein referred to is to be delivered to A. E. Clark, and the written statement aforesaid to the aforesaid attorneys for Mary E. Cronen when said sum of $3000.00 is paid, and upon failure to make such payment as provided for in the instructions to the escrow agent, the release is to be surrendered to said attorneys for Mary E. Cronen, and the statement to the said A. E. Clark."

There is no question but what the additional $3000.00 could be paid prior to the expiration of the 90 days. And as shown by the testimony there was a general understanding that such would be paid much sooner than that time, and the whole settlement completed. (Transcript of Record, page 104). But through an abundance of precaution the 90-day period was agreed upon.

Now then, the testimony adduced at the trial of this suit and cited by us in this argument, is not such as to contradict the terms of the stipulation as above referred to, but to explain the same. In other words, though the stipulation says, "The release herein referred to is to be delivered to A. E. Clark, and the written statement aforesaid to the aforesaid attorneys for Mary E. Cronen when said sum of $3000.00 is paid, etc.," there could have been an oral agreement or understanding that such statement was to be delivered within a period of two weeks from the execution of the escrow agreement.

Gaston v. City of Portland, 16 Oregon 255.
Campbell v. Thomas, 42 Wis. 437.
Stanton et al v. Miller et al, 58 N. Y. 202.

Or we might go a step further and ascertain the time in which this statement was to be delivered from the intention of the parties at the time of making the escrow agreement, and following the doctrine laid down in Gaston v. City of Portland (supra) that "the intent of the grantor must govern, and this is to be derived from all the facts, circumstances and proof," then the time in which the statement was to be delivered can be ascertained from the intent of the appellant in stipulating to release certain members of appellee's family from all claims and demands upon a consideration of obtaining this statement; and that intent is to be derived from what was said, from what was done at the time of the execution of the escrow agreement, and from what was sought to be accomplished by making such agreement. We have seen that the uppermost thing in appellant's mind in making the escrow agreement was the obtaining of this statement of vindication. In the examination at the trial of this case of Mr. John H. Stevenson, who acted as one of the attorneys for appellant at the time of making the escrow agreement, being questioned as to when the statement of Frank Allen Moore and Margaret Gleason Moore, mentioned in the stipulation ("Plaintiff's Exhibit 5," Transcript of Record, page 61), was to be delivered, said:

> "Well, the only conversation I can recall now was this: I think Miss Cronen asked Mr. Clark how soon he could have back the statements by Frank Allen Moore and Margaret Gleason Moore, and I don't pretend to remember the dialogue, but what I gained from it was merely a matter of sending up there for the statements."

And being asked "Up where," replied:

> "Up to Walla Walla. And that they would come right back. That is, the understanding I gained from it was, there would be no difficulty involved, or no delay, in getting these statements here, getting them signed, but whether there was any exact agreement between us as to just when they would be delivered here, my memory isn't clear." (Transcript of Record, page 78).

The same witness being further examined by the attorney for the appellee, on the same point, in answer to the following question, viz.:

> "Just one more question I forgot, with the permission of your Honor. You said a few moments ago that you didn't recall whether there was any talk or agreement with respect to the time when the statement from Frank and his wife was to be back; that is, to be back in Portland; the agreement was just as put down in writing, was it not? That that statement of Frank's, when it came here, was to go into the bank, or was to be delivered to you when the Walter Baker Moore matter was also closed up?"

testified as follows, to-wit:

> "I am not prepared to say that was the exact understanding. There was a sort of feeling among us that the whole matter would be adjusted a great deal sooner than it was, and I am not prepared to say that it was understood positively among us that this was—that the Frank Allen Moore feature of it was to await the consummation of the other settlement. My understanding was, in a general way, that any time the statement of Frank Allen Moore and Margaret Gleason Moore came here, they might be exchanged for this other, but I don't know there was any positive agreement on the last." (Transcript of Record, pages 83 and 84).

And again, being asked:

> "———— And the time to wind it (escrow agreement) up was fixed at 90 days?"

answered:

> "As to Walter Baker Moore. I am not so clear as to the others. No, there was some talk at the time as to how soon we could get these statements (statements of Frank Allen Moore and Margaret Gleason Moore) back. That is the only thing that leads me to think there might be a sort of feeling that this phase of it could be concluded sooner. But I wouldn't say any positive meeting of the minds upon that point." Transcript of Record, pages 84 and 85).

So the substances of Mr. Stevenson's testimony is that he was uncertain as to whether there was an understanding as to when the statement of Frank Allen Moore and Margaret Gleason Moore was to be delivered, but from what he heard said at the time he thought there might be a feeling that this part of the agreement was to be concluded before the expiration of the 90 days.

John A. Logan, who acted as the other attorney for appellant at the time of the execution of the agreement, was called as a witness at the trial of this suit, and being examined as to the point in question, the following colloquy between he and the attorney for appellee took place:

> "Q. Was it your understanding at the time that we were to receive the release of Frank Moore and his wife and Governor Moore before we had paid the additional $3000.00?"

"A. Well, now, it wasn't my understanding that it was to be paid over, as a matter of contract, when it was turned over, but I can see now that Miss Cronen understood it that way."

"Q. That is, you mean to say that it was her intention to turn over to us, or Frank Moore and his wife and the Governor, before we had paid her the additional $3000.00?"

"A. The way is this: it requires a little explanation,—I wasn't there all the time while this was being dictated, but this last stipulation with reference to Frank Allen Moore,—I had a notion that the $3000.00 was to have been paid much sooner than 90 days, but out of an abundance of caution, the 90 days was named, although you first wanted a longer time."

"Q. Yes, I wanted 120 days?"

"A. Out of an abundance of caution, 90 days was named. Miss Cronen—and there again comes the matter of money that we were looking after, and the matter of sentiment and vindication of character she was looking after—she said to you, 'Now, when can that be back?' And you said, in substance, about as soon as the mail can get back from Walla Walla, as you walked out of the room, because you said you were going away over to the Sound the next day or Monday? This was Saturday. She said, 'I want to know when that will be back? I want to know. That is what I want,' and you said two weeks that would be here, giving ample time for delayed mail."

"Q. Then it was to go in—when it returned, it was going to go into escrow in the Security Savings and Trust Company?"

"A. It was."

"Q. And was to be delivered at the same time the money was?"

"A. It was."

"Q. I gave it as my opinion we could get it back here in a couple of weeks?"

"A. You did."

"Q. And that notwithstanding 90 days is fixed?"

"A. Yes, because she wasn't to get the vindication without the money. You could hold that vindication without the money." (Transcript of Record, pages 100, 101 and 102).

And while we note here that Mr. Logan said appellant was not to receive the statement of vindication until the money was paid, yet we also note that Mr. Logan remembers distinctly the conversation the appellant had with Mr. Clark relative to the returning of the statement, which conversation all went to the effect that appellant wanted the statement returned as soon as possible, as soon as the mail could bring it, and allowing for delay, within a space of two weeks.

Mr. Logan testifying further as to when the statement in question was to be delivered, said:

"At the meeting. As we were just closing the meeting, Miss Cronen was insisting all the time she wanted that (statement of Frank Allen Moore and Margaret Gleason Moore) down here in as quick a time as possible. We lawyers, I am satisfied, didn't give it the importance that she did, but I understood it was not to be given over until the money was paid over, and the money wasn't to be paid over until 90 days it came with the money, al-

though we understood the money would be here in a very short time." (Transcript of Record, page 104).

Now then what is to be considered as the time in which this statement was to be delivered? Is that time to be determined from what her attorneys understood when the escrow agreement was made, and which understanding from their own testimony they seem very much in doubt? Or is that time to be determined from what this appellant intended and which was most forcibly manifested in what she said and what she insisted upon when the agreement was made? And in this connection let us take up appellant's own testimony upon cross-examination at the trial of this case:

"Q. Are you objecting to that?" (Meaning the procuring of the statement of Frank Allen Moore and Margaret Gleason Moore within 90 days).

"A. No, I don't object to that. What I object to is that I did not get them as you promised by return mail."

"Q. What you object to is you didn't get them by return mail. Did you expect, if it got back by return mail, it would be given immediately to you?"

"A. Surely."

"Q. And the release of Frank delivered to me?"

"A. Surely."

"Q. Without the payment of the additional three thousand?"

"A. The payment of the additional three thousand had absolutely nothing to do with that—I am getting kind of mixed in my English."

In this we find appellant reiterating with precision and emphasis her understanding as to when the statement was to be returned and delivered to her.

From the testimony of the appellant and from the testimony of both Mr. Stevenson and Mr. Logan, though the testimony of the two latter is couched in uncertain terms, and from all the facts and circumstances surrounding the execution of the escrow agreement, we conclude that the time fixed for the delivery of the statement called for in the stipulation ("Plaintiff's Exhibit 5") was as soon as the same could be sent to Walla Walla, Washington, and there signed and returned, and a space of two weeks was allowed for this. This unquestionably was the testimony of the appellant, and that intention was certainly conveyed to the attorney for the appellee at the time of making the escrow agreement. The attorney for the appellee by what he represented and told appellant clearly indicated that he was aware of appellant's intention when she insisted upon an immediate return of the statement of vindication, and he gave her to understand that he would comply with that intention. It is not denied that the statement in question was not delivered to appellant or tender of delivery made to appellant within the space of two weeks from the execution of the escrow agrement. So then, if such statement was to be delivered within the space of two weeks from the execution of the escrow agrement, the non-delivery of such, or tender of delivery, on the part of the appellee constituted a breach of the contract as to the appellee. Whether or not this breach is to be taken as depriving the appellee of any right under the escrow agreement will be taken up later,

wherein time as being of the essence of the contract is fully discussed.

TIME AS FORMING THE ESSENCE OF THE CONTRACT.

We now take up the discussion as to whether or not the time within which the terms of the escrow agreement were to be performed, was of the essence of the contract. Was it essential, taking into consideration the thing sought to be accomplished by the escrow agreement, that the things therein contracted to be performed, be so performed within the time agreed upon? In other words, was it essential that the certificate of good moral character be delivered by appellee to appellant within the time agred upon, or could such be delivered at any time after the period for delivery had expired without doing great injustice to the appellant?

Pomeroy in his special work on Specific Performance on page 453 says:

> "Although, in ordinary cases, time is not essential, yet it may be, and is, essential whenever the intention of the parties, as shown by the contract, is clear that the performance of its terms should be accomplished punctually at the stipulated day it is a matter of intention, and the intention must govern."

and on page 458 he says further:

> "And in general, whenever, from the terms of the agreement, or from the nature of the subject matter, the treating time as non-essential would produce a hardship, and delay by one party in complet-

ing or in complying with a term, would necessarily subject the other party to serious injury or loss, time will be held essential."

We can imagine the facts and circumstances of no case to which the words of Mr. Pomeroy are more applicable than the case we have here under consideration.

As heretofore stated, it is contended by appellant, that the time within which the statement of Frank Allen Moore and Margaret Gleason Moore was to be delivered to her was fixed at two weeks from the execution of the escrow agreement. Following the doctrine as laid down by Mr. Pomeroy (supra) what then would be the effect upon appellant if such statement was not so delivered to appellant within the time agreed upon. Would she suffer any? And if she would suffer at all to what extent?

We do not care to review again all the circumstances surrounding and entering into the execution of the escrow agreement. However, we do wish to call to your attention again the object sought to be accomplished by appellant in the obtaining of the statement of vindication signed by Frank Allen Moore and Margaret Gleason Moore, and in this connection a few of the circumstances must be again recalled. Miss Cronen claimed to be and was a good woman with a character above reproach. She was educated and cultured. She was well thought of by her friends and had a high standing in her community. There was a promise of marriage existing between she and the appellee. Because the contemplated marriage between she and the appllee did not meet with the approval of certain members of the appellee's family they took it upon themselves to spread

reports charging the appellant with misconduct, unchastity and immorality. In this way they hoped to prevent the marriage, and through such they succeeded. The appellant knew these charges to be malicious lies, perhaps her dearest friends and intimate associates knew them to be untrue. But what was the judgment of all her acquaintances? What was the word passed from lips to lips throughout the community in which she lived? Here was a good woman, who in the eyes of her friends and the people of her community, was being dragged down to the depths of that fallen and degraded woman. She was looked upon as an outcast by those who did not know the truth. She was ashamed to show herself in public—she was pointed at with ridicule and contempt. That suffering which a good woman has to bear through unjust and absolutely unwarrantable charges of her misconduct and immorality is beyond words to describe. There is no suffering so hard to bear as the suffering of the mind and the heart. This was the suffering which appellant was undergoing throughout the entire negotiations for the settlement of her suit for the breach of promise; this was the suffering from which she wished to be relieved when she executed the escrow agreement. It was shown time and time again that she cared not for what money she might receive in the way of a settlement. She wanted something to show that the charges made against her were untrue. And if she was suffering from the effects of these false reports during the period in which negotiations were pending, surely she must have suffered as much, if not more, when the appellee failed to deliver to her the statement of vindication which he agreed to. She had hoped to obtain this statement at the time

agreed upon and the failure of the appellee to so deliver the same at such time only served to make the suffering of the poor woman the more intense. She anxiously waited for the appellee to make good his promise and repeatedly inquired of her attorney if such statement had been delivered. And becoming impatient and incensed because of the failure of the appellee to abide by the terms of the escrow agreement she wrote the Security Savings and Trust Company rescinding in full the escrow agreement. (Plaintiff's Exhibit 8, Transcript of Record, page 109). This letter was written three weeks after the time had expired in which delivery of the statement was to be made. Knowing that the one essential thing appellant desired to accomplish through the execution of the escrow agreement was the obtaining of the statement of vindication as soon as she could, and when she did not obtain it at the time agreed upon, was she not justified in rescinding the whole agreement? Was it just and fair to this appellant to grant the decree of specific performance compelling her to carry out the terms of the escrow agreement, when the appellee had made a breach of the most vital covenant contained in the same agrement?

In the case of Quinn v. Roath, 37 Conn. 16, the Court said:

> "Whether specific performance of a contract shall be decreed is in a great measure dependent upon judicial discretion, exercised not arbitrarily or capriciously, but reasonably, acording to the circumstances of the particular case."

The Court in granting the decree for specific performance in the case under consideration virtually dis-

regarded the object sought to be accomplished by the execution of the escrow agreement. We ask, is it equity or justice to grant a decree in favor of one who has been at fault, and wholly disregard the suffering and hardship endured by the innocent party? It cannot be said that this appellant did not endure intense suffering and hardship through the failure of the appellee to make performance of his part of the agreement. Would it not be more just and equitable to refuse the decree for specific performance and say to this appellant that she has been subjected to great hardship and unfairness through the failure of the appellee to abide by the terms of the agreement, and because of the hardship and suffering imposed on her by appellee in failing to abide by the terms of the agreement that said appellee was not entitled to any relief in a court of equity. We feel that the facts and circumstances surrounding this suit would warrant the refusal of the decree.

In the case of Gale & Gale v. Archer, 42 Barbour (N. Y.) 320, suit was brought to compel the specific performance of a contract entered into between the plaintiffs and defendant on June 6, 1862, and to be completed July 1, 1862. The contract called for the exchange of property of a fluctuating value, and also involving growing crops, the care of live stock and the discontinuance of work on the farm in the middle of the harvest season by the defendant. A breach of the contract was made on the part of the plaintiffs by non-performance on the day specified, and later they brought an action in a court of equity asking for the specific performance of the contract on the part of the defendant. The Court said:

"In seeking to determine whether time is of the

> essence of the contract between the parties in this action we must see what was the subject of it, and what it was that they intended to accomplish, as well as its date, and the time fixed for performance. ——— Such a contract, or rather the execution of it, cannot remain suspended in doubt for any period of time, without the most serious anxiety and detriment of the contracting party, who intends in good faith and is prepared to fulfill. And if the other party fails a specific performance cannot be enforced without injury and injustice to him who has been guilty of no laches or wrong. ——— The Court will exercise a sound and reasonable discretion, and will never grant relief thus sought unless it is entirely equitable and right, and will work no injustice to the adverse party."

Following the doctrine laid down in the case just referred to, we ask the Court, could the execution of the escrow agreement remain suspended in doubt or uncertainty for any period, without the most serious anxiety and detriment to this appellant, who in good faith intended and was prepared to fulfill the same? Surely when she did not receive the statement of vindication at the time agreed upon she continued to labor under the most serious anxiety as to whether she ever would receive such statement. Was not her hopes of obtaining some means to partially set her aright before her people, shattered when appellee failed to produce the certificate of her good moral character at the fixed time? Was this failure not a detriment to her? We fail to see where it is not an injustice and injury to this appellant to wholly disregard the suffering and anxiety and detriment she experienced through the failure of the appellee to make delivery of the statement as agreed. We fail to see where it was equitable and just, or wherein the Court

could say that it was doing substantial justice to the parties, to compel appellant to perform her part of the contract, and at the same time absolutely disregard her hardship occasioned through the non-performance of the escrow agreement on the part of the appellee.

In concluding this phase of our argument we feel justified in saying that the thing sought to be accomplished by appellant in making the escrow agreement was the obtaining of the statement of vindication; that the circumstances surrounding the contract were such as to demand that such statement be delivered within the exact period of time agreed upon; and that that period of time was of the essence of the contract.

We take the following from Pomeroy, page 472, of his special work on Specific Performance:

> "Whenever time is essential, **delay, as such,** is never taken into account; that is, the party in default does not lose his right to enforce the agreement, simply because he delayed in the performance, but because he failed to comply with its terms **literally** and **exactly** upon the very day when the act was required to be done according to his stipulation. If time is of the essence of the contract, then the whole agreement, with all its rights and obligations turn upon a performance at the very appointed day. ———— In short, if time is essential, the same strict rule prevails in equity as at law, and the party who has stipulated to do an act at a specified time, must do it at that time, or he loses all his remedial rights in a court of equity, as well as in a court of law."

And because the appellee failed to make performance, of that part of the escrow agreement which was

essential, within the exact time agreed upon, we strongly contend that he was not entitled to his decree for specific performance obtained in the trial court.

A DECREE IS ERRONEOUS IN NOT REQUIRING THE SPECIFIC PERFORMANCE OF THE ENTIRE CONTRACT.

By reference to the decree granted in this case (Transcript of Record, page 38), we find the trial Court absolutely silent and making no disposition whatever of that part of the escrow agreement executed by appellant and appellee wherein appellee was to deliver the statement signed by Frank Allen Moore and Margaret Gleason Moore in exchange for a release by appellant as provided in the stipulation marked "Plaintiff Exhibit 5" (Transcript of Record, page 61).

The branch of our argument which we will consider now, involves the question of whether the decree of the trial Court was erroneous in not compelling the specific performance of the entire contract made between appellant and appellee. In this connection it is necessary to first determine just what constituted the contract between appellant and appellee. To determine this we beg the indulgence of the Court to call to its attention again that at the meeting of the attorneys and appellant on February 24, 1912, Mary E. Cronen, appellant, agreed to dismiss her suit against Walter Baker Moore, appellee, and give him a release and discharge of all claims against him in consideration of the payment of $6000.00 and the delivery to her of a certain statement signed by appellee. At this same meeting of the attorneys and

appellant a stipulation was entered into whereby appellant agreed to release and discharge Frank Allen Moore and Margaret Gleason Moore from all claims and demands upon the delivery to her of a certain statement signed by Frank Allen Moore and Margaret Gleason Moore. Now the question that confronts us here is whether or not all matters agreed upon and all things done at this meeting of the attorneys and appellant in perfecting the settlement agreement constituted one and the same contract. In other words, do the things agreed to be done as evidenced by Plaintiff's Exhibits 1 to 4, inclusive (Transcript of Record, pages 49, 50, 51 and 52, respectively), and the things agreed to be done as evidenced by Plaintiff's Exhibits 5 and 6 (Transcript of Record, pages 61, 62 and 63, respectively), constitute a contract of entirety? Are they to be read together and considered as one?

It is our contention that the settlement agreed upon between appellant and appellee was one which included and embodied all those things agreed to be done as set forth in Plaintiff's Exhibits 1 to 6, inclusive.

The meeting of the attorneys and appellant on February 24, 1912, was called for the sole purpose of effecting a settlement of the controversy between appellant and appellee. In bringing about this settlement the appellant had a right to demand of the appellee anything she saw fit, and the appellee had the same right to demand of the appellant anything he saw fit. Their demands could relate to the subject matter of the controversy, or they could not. They could be material and essential demands, or they could be mere fancy and

whims. But when either party, in order to effect the settlement, granted to the other his or her demand, whether such relate to the subject matter or not, or whether it be material or mere fancy, then such thing granted and agreed to formed a part of the settlement. The agreement to settle the controversy includes everything granted and agreed to in order to accomplish the settlement.

True it is Miss Cronen had only sued Walter Baker Moore, and yet when she was making the settlement with appellee she demanded things from parties she had not sued namely, the statement from Frank Allen Moore and Margaret Gleason Moore. And this the appellee agreed to furnish. (Transcript of Record, pages 64 and 65). In this instance the thing demanded by appellant and agreed to by appellee was such as pertained to the subject matter of the controversy. It was a retraction of untrue statements made about her, which, if true, would have served as a defense to her suit for breach of promise against the appellee.

As to those instruments which relate to the same subject matter we quote Cyclopedia of Law and Procedure, Vol. 9, pages 580 and 581:

> "Where several instruments are made as part of one transaction, they will be read together, and each will be construed with refernce to the other. Thus where two or more written instruments are executed on the same day, relate to the same subject matter, and one refers to the other, the presumption is that they evidence but a single contract."

Many cases are cited in suport of this doctrine. In the case of Bean et al v. Lawham, 7 Oregon 423, the reviewing Court said:

> "It is unnecessary for us to consider what would be the legal effect of the first agreement, standing by itself, as between the parties to it. The two contracts being contemporaneous and relating to the same subject matter, must be construed together as constituting but one agreement."

In the case we have under consideration there were several instruments executed and agreed to be executed, but each had a bearing upon the same transaction. Each had for its purpose the accomplishment of the settlement of the controversy between appellant and appellee. There was a connecting link betwen them all —each had reference to the other, and especially did the stipulation agreeing to deliver the statement signed by Frank Allen Moore and Margaret Gleason Moore to appellant, refer to the other matters concluded that day,—for we find such stipulation reciting that the statement therein agreed to be given should be delivered when the additional money was paid. And yet the decree of the Court absolutely fails to take any notice of this part of the agreement. The decree cuts the contract in two—one branch is divorced from the other and given no consideration whatever. We fail to see wherein the agreement to deliver the statement signed by Frank Allen Moore and Margaret Gleason Moore was not just as much a part of the contract of settlement as was the payment of the $6000.00. The appellant demanded such all through the negotiations for the settlement of the controversy between she and the appellee. (Transcript of Record, page 96). She demanded it the

day the settlement was agreed to before she would consent to a settlement. Her demand was one which arose out of the subject matter then being disposed of, and in order to perfect a settlement and dispose of the matter the appellee acceded and agreed to her demand. With these facts, together with the instruments themselves, we fail to see where the contract for the settlement of the controversy between appellant and appellee did not include the agreement to deliver the statement of vindication signed by Frank Allen Moore and Margaret Gleason Moore in exchange for appellant's release. We claim that the decree granted in this case was erroneous because it failed to decree a specific performance of the entire contract. It is a well settled principal of equity that a decree compelling specific performance must conform to the contract.

Bennett v. Giles, 111 Ill. App. 428.

Freeburgh v. Lamoureux, 15 Wyo. 22.

26 Am. & Eng. Enc. of Law, 65-66.

20 Enc. Pleading & Practice, 496.

Giplin v. Watts, 1 Colo. 479.

The decree must be such as will enforce the contract in all its terms and conditions. If the decree fails to make disposition of the entire contract, then the Court stands in the position of making a new contract between the parties when it takes no notice of terms embodied in the original agreement. No Court has the power to make a new contract between the parties, and yet in this case it does make such a contract when it loses sight of material covenants contained in the original agreement.

It might be said that the decree in this case enforced the terms of the contract as set forth in appellee's complaint—but it is most probable that a complaint in a case of this nature will set forth a contract which is most favorable to the complaining party, and in the case under consideration we feel that such was the aim of the appellee. However, the Court is not bound by what the complaint may set up as the contract, for in Thompson v. Hawley, 14 Oregon 199, the Court said:

> "In a suit for specific performance the defendant has a right to plead in his answer, as new matter, a contract different from the one alleged in the complaint, and the Court will then ascertain from the evidence which was the real contract."

The answer of the appellant to appellee's complaint, alleged, as new matter, but as a part of the original contract, the agreement to deliver the statement of Frank Allen Moore and Margaret Gleason Moore in exchange for her release of all claims against them. The complaint failed to make any mention of this part of the agreement, but having established that such was a part of the original contract, and having also established that the appellant had a right to set such up in her answer, was she then entitled to a decree enforcing her version of the contract? The Supreme Court of the State of Oregon has passed directly on this question, in Thompson v. Hawley (supra), wherein it said that the defendant may have specific performance of the version of the contract as set up and proved.

See also:

Garrett v. Goff, 61 W. Va. 221.

Bradford v. Union Bank of Tennessee, 13 How. (N. Y.) 169.

In concluding our argument we feel that in all justice and equity the trial Court should have refused the decree granted herein for no equity shown on the part of the appellee, when it was shown that the appellee had failed to carry out the essential term of the contract within the time prescribed by such contract.

In addition the decree as granted was erroneous when it failed to provide for the specific performance of the entire contract as set up and proved.

For the foregoing reasons, we respectfully submit that the decree of the lower Court should be reversed and the complaint dismissed.

Respectfully submitted,

STOTT & COLLIER, and
J. L. HOPE,
Attorneys for Appellant.

IN THE

United States Circuit Court of Appeals

NINTH DISTRICT

MARY E. CRONEN,
Appellant

VS.

WALTER BAKER MOORE,
Appellee.

BRIEF OF APPELLEE

Upon Appeal from the United States District Court for the District of Oregon.

HON. R. S. BEAN, Judge

STATEMENT.

This is a suit in equity brought by the appellee against the appellant to compel the delivery to appellee of certain papers deposited in escrow with the Security Savings & Trust Com-

pany, of Portland, Oregon. The Security Savings & Trust Company was made a defendant but made no appearance in the suit. The papers were deposited in escrow in connection with a settlement between appellant and appellee of an action at law pending in the Circuit Court of the United States for the District of Oregon. The bill in equity may be found on pages 1 et seq of the transcript of record. We feel that it would be profitable in this statement to give a somewhat detailed history of the circumstances leading up to the filing of the bill in equity.

In May, 1911, Mary E. Cronen, appellant here, brought an action at law in the Circuit Court of the State of Oregon, for Multnomah County, against Walter Baker Moore, appellee. The action was removed to the Circuit Court of the United States. This law action was brought to recover damages for the alleged breach of a marriage contract. In the law action the defendant interposed an answer in the nature of a general denial. A copy of the complaint in the law action is attached to the bill in equity as Exhibit "A" and may be found on pages 20 et seq. of the transcript. A copy of the answer in the law action is likewise attached to the bill in equity as Exhibit "B" and may be found on page 24 of the transcript. In the

law action John F. Logan and John H. Stevenson, of Portland, Oregon, were the attorneys for Mary E. Cronen, and A. E. Clark of Portland, Oregon, was the attorney for Walter Baker Moore. (Pp. 42 and 43 trans.) The matter of a settlement of the case had been the subject of negotiations between the attorneys for the respective parties from about the time the law action was brought until the final settlement was agreed upon, according to the testimony of both Mr. Stevenson and Mr. Logan. (Pp. 72, 87, 88 and 89). Finally on February 24, 1912, a settlement was agreed upon. At that time it was agreed that Walter Baker Moore should pay to Mary E. Cronen the sum of $6000.00 in settlement of the law action, $3000.00 to be paid in cash and $3000.00 within 90 days from February 24, 1912. To effectuate the settlement a stipulation was signed in the law action by the attorneys for the respective parties dismissing the law action upon the merits without costs or disbursements to either party, an instrument was signed by Mary E. Cronen releasing and discharging Walter Baker Moore from all claims and demands whatsoever, and there was likewise signed a statement by Walter Baker Moore certifying to the good character of Miss Cronen. These papers are copied into the record at pages 49, 50, 51 and 52 of

the transcript. Inasmuch as $3000.00 of the stipulated amount was not to be paid at once it was agreed that the stipulation for dismissal, the release signed by Miss Cronen and the certificate of good character, so called, signed by Walter Baker Moore, should be deposited in escrow with the Security Savings & Trust Company, and thereupon the following escrow agreement was signed:

"Portland, Ore., Feb. 24, 1912.

"Security Savings & Trust Company,

"City.

"Gentlemen: There is this day deposited with you the following papers:

"(1) Stipulation for dismissal of the case of Mary E. Cronen v. Walter Baker Moore, now pending in the District Court of the United States for the District of Oregon.

"(2) Release and discharge of Walter Baker Moore of all claims and demands of whatsoever nature, signed by Mary E. Cronen.

"(3) Statement signed by Walter Baker Moore, certifying among other things, of the high moral character of Miss Cronen.

"Settlement of all matters and things between these parties has been agreed upon, and the sum of Three Thousand Dollars has been paid. An additional

Three Thousand Dollars is to be paid within ninety days from this date. Upon the payment of such sum to you, to be paid to John H. Stevenson, Attorney, or to his order, you are to deliver to A. E. Clark, Attorney for Walter Baker Moore, the stipulation and the release above mentioned, and you are to deliver to John H. Stevenson, attorney for Miss Cronen, the statement above mentioned, signed by Walter Baker Moore.

"In the event said sum of Three Thousand Dollars is not paid within the ninety days aforesaid, the escrow shall terminate, and the said stipulation and the said release shall be delivered to John H. Stevenson, and the said statement to A. E. Clark.

"Yours truly,

"A. E. CLARK,

"Attorney for Walter Baker Moore.

"JOHN. H. STEVENSON,

"Attorney for Mary E. Cronen."

These papers were all signed in the office of the attorneys for Miss Cronen, with the exception of the certificate signed by Walter Baker Moore, which had been signed by him in San Francisco and forwarded to Portland to be used in making the settlement. The attorney representing Mr. Moore did not have the first payment of $3000.00 with him at the time and

so all of the papers were left in the custody of Mr. Stevenson, attorney for Miss Cronen, upon the understanding that they were to be deposited with the Security Savings & Trust Company when the initial payment of $3000.00 was made. Within a day or two this sum was paid and the papers deposited in escrow. Touching the circumstances surrounding the execution of these papers, Mr. Stevenson, one of the attorneys for the appellant in the settlement, testified:

Q. Now, do you recall the circumstances of a settlement being arrived at in February, 1912?

A. Yes, sir. I was—I took part in it. I negotiated the settlement.

Q. And where were the papers relating to that settlement signed?

A. In Mr. Logan's and my office.

Q. And were some of those prepared in your office that day—during the course of the negotiations?

A. They were, yes.

Q. And who were present when the negotiations occurred, and when the papers were signed?

A. Yourself and Miss Cronen, Mr. Logan and myself.

Q. All in the same room?

A. Yes, sir.

Q. Who were there representing Miss Cronen?

A. Mr. Logan and myself.

Q. And I was in the midst of all you alone?

A. Yes, sir.

MR. CLARK: Probably the orderly way would be to have shown that these papers were produced by the Security Savings & Trust Company, but I will show that shortly, your Honor.

Q. I call your attention to a paper under date of February 24, 1912, addressed to the Security Savings & Trust Company, and purporting to have been signed by myself as attorney for Walter Baker Moore, and by John H. Stevenson as attorney for Mary E. Cronen, and I will ask you whether or not you signed that paper?

A. I did, yes, sir.

Q. And state whether or not that paper was signed in your office upon the 24th day of February?

A. It was.

Q. And in whose presence?

A. And in the presence of Miss Cronen, yourself, Mr. Logan and myself.

Q. State whether or not Miss Cronen was

fully advised by you and Mr. Logan of the contents of that paper?

A. As far as I know, she was.

Q. She was present during the entire negotiations?

A. She was at that time.

Q. And you understood what the paper contained?

A. I did.

Q. And you were representing her as her attorney?

A. Yes, sir.

(Pp. 43, 44 and 45, Transcript).

* * * * * *

Q. I also call your attention, Mr. Stevenson, to what purports to be a stipulation for a dismissal of the law action referred to, and purporting to be signed by you and by myself representing the plaintiff and defendant.

A. It is such a stipulation, and I so signed.

Q. Signed by you, and by myself?

A. Yes.

Q. And when was that signed?

A. At the same time, the 24th of February, this year.

Q. And in the presence of Miss Cronen?

A. Same parties.

Q. Did you understand fully what you were doing when you signed the stipulation?

A. I think so.

Q. And do you know whether Mr. Logan also was fully cognizant of the contents and character of the stipulation?

A. As far as I am advised, he was.

Q. And state whether or not the matter of the stipulation and its force and effect was discussed in the presence of Miss Cronen?

A. I believe so.

MR. CLARK: I offer the stipulation in evidence. Marked "Plaintiff's Exhibit 2."

Q. I call your attention now to another paper purporting to be a release signed by Mary E. Cronen, witnessed by yourself and myself.

A. That is such a release, and is signed by yourself and myself.

Q. As witnesses?

A. As witnesses.

Q. And by Mary E. Cronen?

A. Yes, sir.

Q. Where was that instrument signed?

A. In my office on the 24th day of February, 1912.

Q. State whether or not this instrument was read to, or read by Miss Cronen, before she signed it?

A. Yes.

Q. Do you remember any incident in con-

nection with the language used in this release, which calls to your mind the fact that it was fully discussed at the time?

A. The only thing I recall now is the discussion of the breadth and scope of the release, as to whether or not it had the effect of discharging Walter Baker Moore, and his heirs alone, or whether it also had the effect of discharging his family—relations.

Q. And that was a discussion that arose in the presence of Miss Cronen?

A. Yes.

Q. And before the release was signed?

A. Yes.

Q. And it was the subject of discussion, was it not, between Mr. Logan and yourself, and Miss Cronen and myself?

A. It was.

Q. With respect to the scope of the release?

A. Yes, sir.

Q. After which the release was signed?

A. That is correct.

MR. CLARK: We offer in evidence the release. Marked "Plaintiff's Exhibit 3."

Q. I show you another paper, and ask you whether or not that was produced at the time of the settlement, and made a part of the papers that were to be deposited in escrow?

A. It was.

Q. Do you remember by whom it was produced?

A. By you.

Q. Do you remember whether or not we had taken two or three weeks to get that in just the form that would be satisfactory to Miss Cronen?

A. Some considerable time, I recall.

Q. And do you recall the form which you finally sent over was the form that was finally adopted and signed?

A. I believe this is substantially, if not exactly, the form that I sent over.

MR. CLARK: The paper last referred to by the witness is offered in evidence. Marked "Plaintiff's Exhibit 4."

Q. I note on this paper, following the signature of Walter Baker Moore, is this "I hereby certify that the above signature is that of Walter Baker Moore," dated February 24, 1912, and signed by me. Do you remember how, in the course of the negotiations there, I came to put that certificate on?

A. I think there was a request.

Q. Do you remember who made the request?

A. I believe Miss Cronen mentioned it, and

I believe I asked you to certify it. You certified—verified the signature.

Q. In other words, you were taking—in the course of that settlement, you weren't taking chances as to whether or not that was Walter Baker Moore's signature?

A. I think we wanted it verified.

Q. And you were extremely careful, were you not, in all the details of the negotiation?

A. We tried to be.

(Pp. 45, 46, 47, 48 and 49, Transcript).

Q. Now, Mr. Stevenson, after these papers had been agreed upon and signed, what was done with them that day?

A. They were left with me until the following day.

Q. What for?

A. Until you could make arrangements to deposit the money in escrow, to pay over the—

Q. First three thousand dollars?

A. (Continuing) First three thousand dollars.

Q. I didn't have the $3,000 with me at that time. Do you remember how I happened to go over to your office that day in connection with this matter.

A. I think I asked you to come over, as I recall now.

Q. The amount of the settlement had been

a subject of considerable negotiation, had it not?

A. Yes.

Q. For a long time. Is it not a fact that your office insisted on having a minimum of $7500?

A. Why, I don't recall the minimum.

Q. You started with something considerably bigger than that, some thirty or forty thousand, but you eventually got down to what you declared to be an irreducible minimum of $7500. Do you recall that?

A. I don't recall the irreducible minimum, or we would probably adhered to it.

Q. Well, I understand; but reduced to a minimum, and I got up to $5,000, and there we hung until in February, 1912. Do you remember that?

A. I don't recall, Mr. Clark, the exact time when we reached the $6000 stage, but it was some little time before the papers were signed.

Q. More than two or three weeks?

A. Well, it was probably two or three weeks.

Q. Probably two or three weeks?

A. Somewhere along there.

Q. Then the question arose as to the form of this retraction of Walter Baker Moore?

A. Yes.

Q. And I drew that, and you sent it back to me with these lead pencil notations, and was finally signed in the exact form as corrected by you.

A. That is not the form that was finally adopted.

Q. That is the form that was finally signed?

A. No.

Q. Isn't it?

A. No.

Q. Are those your lead pencil corrections?

A. These are, yes, but this is not the form that was finally signed. For instance, the matter here referring to the measure of damages, if I recall, is not in the certificate as signed, and the matter referring to the above entitled court.

Q. Now, let's read them, and see if the one you sent back to me as corrected, isn't the one as finally signed: "Whereas, as there is now pending in the above entitled court, an action by Mary E. Cronen, against the undersigned to recover damages for breach of a marriage contract, and whereas, the measure of damages in said action has been determined and adjusted—"

A. I guess you are right.

Q. (Continuing) "Therefore, this declara-

tion is by me made voluntarily." As a matter of fact, Mr. Stevenson, I took the form you sent, and took it down and had it signed.

A. I know, but I had forgotten that was the form.

Q. You remember a good deal of discussion between you and your client, and you and me as to the form?

A. Yes, a great deal.

Q. And I finally adopted with great reluctance the form you and your client agreed upon?

A. I remember, but I had forgotten that was the form. I see now it is.

Q. When these papers were all signed, including this certificate of Mr. Moore, I left them all with you?

A. Yes, sir.

Q. Until such time as the $3,000 was paid —the first $3,000?

A. Yes, sir.

Q. Do you remember why they were left with you that day?

A. Well, I presume they were left with me until such time as you could pay the initial $3,000.

Q. Yes, but my paper and yours were all left in your custody?

A. Yes, all.

Q. Do you remember Miss Cronen saying she rather have all the papers remain with her attorney until the $3,000 was paid?

A. I don't recall that.

Q. Anyway, they were left there?

A. They were left there, that is true.

Q. A day or two later, do you recall my telephoning you to meet me at the Security Savings & Trust, and I would pay the $3,000?

A. The next day.

Q. The next day, and to bring the papers with you?

A. Yes, sir.

Q. What papers did you bring with you?

A. All the papers that are in escrow.

Q. State whether or not there was at that time deposited in escrow with the Security Savings & Trust Company the papers introduced in evidence.

A. They were deposited.

Q. You were there at the time?

A. Yes, sir.

Q. Did I pay you for Miss Cronen the sum of $3,000 on that day?

A. Yes, sir.

Q. And that was taken and received, and accounted for to Miss Cronen?

A. Yes, sir.

Q. And that has been kept, has it not, as far as you know?

A. As far as I know anything about.

Q. As far as you know, no part of it has ever been returned, or offered to have been returned?

A. Not as far as I know.

Q. It was paid over to, and accounted for, to Miss Cronen?

A. It was.

Q. Now, I will ask you again if, as far as you are concerned, you had a full and complete understanding of the contents and nature of the papers which were signed upon the day of the settlement?

A. I did have.

Q. And understood exactly what was going on?

A. Yes, sir.

Q. And state whether or not during the entire discussion of the case, and in the discussion of all these papers, Miss Cronen was present in the room?

A. She was.

Q. And state whether or not Mr. Logan, your associate, was present a good share of the time, and participated in the discussion and in the council with respect to the character of these papers?

A. I was all the time; Mr. Logan was there the greater part of the time.

(Pp. 53, 54, 55, 56, 57 and 58, Transcript).

It thus appeared beyond all reasonable dispute that a settlement was arrived at, that the papers which were signed in the office of Logan and Stevenson, were fully understood by all of the parties, that these papers were deposited in escrow pursuant to written instructions to the escrow agent, and that the sum of $3,000.00 was paid upon the settlement, which amount was received and has been retained by Miss Cronen.

Mr. Abercrombie, attorney for the trust department of the Security Savings & Trust Company, called as a witness, testified that the papers were deposited in escrow either on February 24th or February 26th, and at that time a check was drawn to the order of A. E. Clark, attorney for Walter Baker Moore, for the sum of $3,000.00, that this check was immediately indorsed over to John H. Stevenson and by him cashed. This was the initial payment upon the settlement. Mr. Abercrombie further testified that on May 6, 1912, an additional $3,000.00 was deposited with the Security Savings & Trust Company, in behalf of Walter Baker Moore, with instructions to pay the same over to Mr. Logan or Mr. Stevenson, as attorneys for Miss

Cronen. Upon the trial, draft for this amount, $3,000.00 was brought into court by the Security Savings & Trust Company, tendered and deposited with the clerk under the order of the Court. (Pp. 106, 107, 108 and 109, Transcript of Record).

This additional sum of $3,000.00 according to the escrow agreement was to be deposited within 90 days after February 24, 1912, hence the deposit was made long before the expiration of the stipulated period. It appears from the evidence of Mr. Stevenson that he and Mr. Logan were notified about May 8, 1912, that the money had been paid into the Security Savings & Trust Company, and a request was then made that settlement be carried out by a delivery of the papers to the respective parties. (Pp. 58 and 59). In the meantime, however, and under date of April 4, 1912, Miss Cronen had served upon the Security Savings & Trust Company a written notice that she had rescinded all agreements with respect to the settlement, and notified the trust company not to deliver any of the papers in escrow to any of the parties to the settlement upon the penalty of being held for damages in the sum of $100,000.00. (Pp. 109, 110, Transcript). From the time notice was served upon the Security Savings & Trust Company, it took the position that

it would not make delivery of any of the papers until the respective rights of the parties had been adjudicated in court. (Pp. 110, 111).

The notice, which appears to be drawn in excellent form, with careful regard of legal formalities, was prepared by Miss Cronen herself without the assistance of anyone, and indicates a degree of ability and familiarity with legal forms quite in contrast with her claims upon the trial that she did not understand the matter of the settlement made in the office of her lawyers on February 24, 1912, or the scope and effect of the papers signed at that time. (Pp. 135, 136, Transcript).

Up to this time the situation may be summarized thus:

A settlement had been agreed upon and papers effectuating the same had been deposited in escrow; $3,000.00 had been paid in cash upon the settlement and received by Miss Cronen and retained by her; the remaining $3,000.00 had been paid into the Trust Company pursuant to the terms of the escrow agreement, on May 6, 1912; the escrow agent would not deliver the release of Walter Baker Moore, or the stipulation dismissing the law action, to the appellee, or his attorney, because of the notice served upon it by Miss Cronen, and Miss Cronen and her attorneys would not withdraw the notice not-

withstanding the former had received $3,000.00 of the appellee's money.

In this state of the case appellee filed his bill in equity, setting up the foregoing facts, and praying for a decree directing the delivery up of the papers deposited in escrow in accordance with the terms of the escrow agreement, and a perpetual injunction against the further prosecution of the law action. The answer interposed to the bill in equity may be found on pages 30, et seq. of the transcript. It is difficult to spell out of it just what, if any, issues were sought to be tendered. There was an apparent attempt to deny the details of the settlement of February 24, 1912, although such settlement is established by un-impeachable documentary evidence, and there is no way of ascertaining from the confused mass of verbage contained in the answer just what defense is sought to be interposed. It is but fair to say that the answer was not drawn, nor was the case tried in the lower Court, by the very able counsel who represent appellant on this appeal.

Upon a hearing the Circuit Court entered its decree in accordance with the prayer in the bill and from such decree this appeal is prosecuted.

At the time the papers were signed, preparatory to being deposited in escrow, settling the law action against Walter Baker Moore,

certain other papers were prepared and signed concerning which a few words of explanation may not be out of place. Miss Cronen wanted some certificate from other members of the family to the effect that she was, so far as they knew, a woman of good character and when she asked for such a paper, the attorney for Walter Baker Moore suggested that she sign a release of these parties who were to sign such a statement, inasmuch as Miss Cronen seemed to be entertaining the mistaken notion, or at least claimed to believe, that they had made statements derogatory to her character. These papers are copied into the record on pages 61, 62 and 63. They consist of a release of Frank Allen Moore, Margaret Gleason Moore and Miles C. Moore, signed by Miss Cronen, and a stipulation in the form of an escrow agreement signed by Attorneys John H. Stevenson and A. E. Clark. The escrow agreement provides in substance that the release last mentioned, signed by Miss Cronen, should be deposited in escrow with the Security Savings & Trust Company, that upon delivery to the trust company of a written statement signed by Frank Allen Moore and Margaret Gleason Moore for delivery to the attorneys for Miss Cronen and in the form set out in the escrow agreement, the release was to be delivered to A. E. Clark.

This was an entirely separate matter, it being understood, according to the testimony of Mr. Logan that the settlement of the law action against Walter Baker Moore was absolute. (P. 94, Transcript.) However, as bearing upon certain allegations in the answer filed by Miss Cronen to the bill in equity, the attention of the court is called to the fact that these latter papers were all prepared in the office of Logan and Stevenson and dictated to their stenographer in the presence of Miss Cronen, the release signed by her at the time and the escrow agreement signed likewise at the time and in her presence. (Pp. 60 to 67). These papers were also left with Mr. Stevenson in escrow and were so deposited. (Pp. 72, 73, 74, 75, 76, 77, 78 and 79). See also the evidence of Mr. Logan. (Pp. 96, 97, 98, 100, 101, 102, 103 and 105).

Called as a witness in her own behalf Miss Cronen, upon cross examination, fully admitted that the papers were all gone over with her and that she understood them. (Pp. 125, 126, 127, 131 and 132). Further that she received the $3,000.00 paid within a day or two after the settlement was agreed upon and has spent the money. (Pp. 142, 143). The whole trouble with Miss Cronen seems to be summed up in this testimony given by her:

Q. What is it you say you haven't got you think you should get in any matters?

A. The thing I didn't get was the vindication from Frank Allan Moore, or his wife, at the time or any time within ninety days.

Q. Do you object to the form of the vindication?

A. I don't, no.

Q. You don't?

A. It is a very good form.

Q. You notified the bank that you had rescinded everything on April 4th?

A. Yes.

Q. Now you say what you really object to is that you didn't get that vindication within ninety days.

A. No, I didn't say anything of the kind, I said by return mail, within a few days. Don't think you can tie me up like that for my heart is in this case, and you can't.

Q. Let's go back and see. Let's read the record.

COURT: You said ninety days; that is what you said. Perhaps you didn't mean it. If you didn't mean it, correct it.

A. What I meant to say is, you did not procure this within ninety days.

Q. Didn't procure within ninety days?

A. No.

Q. Are you objecting to that?

A. No, I don't object to that. What I object to is I did not get them as you promised by return mail.

Q. What you object to is you didn't get them by return mail. Did you expect, if it got back by return mail, it would be given immediately to you?

A. Surely.

Q. And the release of Frank delivered to me?

A. Surely.

Q. Without payment of the additional three thousand?

A. The payment of the additional three thousand had absolutely nothing to do with that —I am getting kind of mixed in my English.

Q. I don't want to mix you up.

A. The thing is this: On the payment of that three thousand dollars, you were entitled to the release that was lying in escrow, don't you see?

Q. I see.

A. Because that other vindication got accidentally put in there, it was tied up for ninety days. I objected to that at the time.

Q. I wanted one hundred and twenty; you wanted sixty, and we compromised on ninety.

A. I don't know anything about that. I left that to Mr. Logan.

Q. Let's get back to the Frank A. Moore matter. Then, as I understand it, getting right down now, you have eliminated a lot of these matters in controversy, apparently. The only thing then that you take exception to is this, apparently, that the Frank A. Moore and wife vindication did not come back as soon as you thought it should. That is, it didn't come back by return mail.

A. Well, the fact that they all laughed around the country, and Mr. Lee told it broadly and the boys told it broadly that they got a "cheap settlement because they had the goods on her." And every little while I went to the office. "Have you heard?" "No, not yet, but be patient, they will come. They will come." Now, on the 24th day of May, Mr. Logan asked me to come down to the office.

Q. Mr. Logan?

A. Mr. Logan in May. That was Saturday afternoon; the ninety days were up and he says: "The only way for you to get the vindication out of escrow is to go down and release the bank from that." I said "I am not going to take that. I don't want that." I told him what had been said about me; the vilest things that had been said about any woman, after

they had all promised, and you had promised as their attorney."

(Pp. 143, 144, 145 and 146, Transcript).

* * * * * *

Q. What are you objecting to?

A. I am objecting to the fact that it was not turned over to me and I was not able to vindicate myself, and put those things on record and refer my friends and people to those things at the time that settlement was made.

Q. You say time was not of any particular consequence to you but what you want is the vindication.

A. I see I have to be very particular what I say here.

Q. What I want is the fact, Miss Croneu.

A. The fact is this: I object to your not delivering this by return mail as you said you would, or within a few days afterwards. That would have been all right. Not wait until the 29th day of February. I wanted to have this on record when my attorneys came to the courtroom and said the case was called off. I wanted to show that as a part of my statement, instead of their going around the country saying they got a cheap settlement. "We had the goods on her and she had to do that." You haven't got the goods on me.

(Pp. 148, 149, Transcript).

Of course the fact is, that the certificate to be signed by Frank Allan Moore and his wife was not to be delivered except upon payment of the remaining $3,000.00 because Miss Cronen would not sign her release of Frank and his wife unless she got the remaining $3,000.00. Mr. Logan explains the mental attitude of Miss Cronen with respect to the time of the delivery of the Frank Allan Moore and wife certificate by saying that there was such discussion at the time to the effect that the paper could be gotten back within a couple of weeks and delivered forthwith and entirely independent of the Walter Baker Moore matter, but frankly admits that it was agreed at the time out of the abundance of caution that 90 days likewise should be allowed for this. (Pp. 150, 151, 152, 153, 154 and 155).

With respect to the certificate of good character to be signed by Frank Allan Moore and his wife, it is sufficient to say that such a statement was prepared and signed, and in the form fixed by the escrow agreement entered into with respect to such certificate and the release of Frank Allan Moore, his wife, and Miles C. Moore, which escrow agreement, as heretofore noted, is copied into the record on pages 61 and 62; and upon the trial of this cause, such certificate was produced and delivery thereof ten-

dered in accordance with such escrow agreement. (Page 113, Transcript).

POINTS AND AUTHORITIES.

I.

When parties to a contract have reduced the terms of their agreement to writing, such writing will be conclusively presumed to contain all of the terms and conditions of the contract.

Talmadge v. Hooper, 37 Ore. 512.

Langell v. Langell, 17 Or. 229.

Hindman v. Edgar, 24 Or. 583.

Edgar v. Golden, 36 Or. 450.

Milos v. Covacevich, 40 Or. 242.

Godkin v. Monahan, 83 Fed. 119.

DeWitt v. Berry, 134 U. S. 306, 33 Law. Ed. 896.

Burnes v. Scott, 117 U. S. 582, 29 Law Ed. 992.

II.

Neither party to an escrow contract can rescind nor modify the terms thereof without the consent of the other.

Tharaldson v. Everts, 87 Minn. 168; 91 N. W. 468.

Cannon v. Handley et al, 72 Cal. 133; 13 Pac. 318.

McDonald v. Huff, 77 Cal. 279; 19 Pac. 499.

Gammon v. Bunnell, 22 Utah 421; 64 Pac. 959.

Grove v. Jennings, 46 Kan. 366; 26 Pac. 739.

Davis v. Clark, 58 Kan. 100; 48 Pac. 565.

Bury v. Young, 98 Cal. 446; 33 Pac. 338.

Guild v. Althouse, 71 Kan. 604; 81 Pac. 172.

Schmidt v. Deegan, 69 Wis. 300; 34 N. W. 85.

Fred v. Fred, 50 Atl. 776 (New Jersey Chancery 1901).

16 Cyc. 570.

11 American & Englis Ency., 2nd Ed. page 344, point 3.

Vol. 19 Century Digest Column 1818, Sec. 10.

Volume 8 Decennial. Digest, Escrows Sec 8 (2).

III.

This suit is maintainable to procure the delivery of papers to which complainant is entitled.

Fred v. Fred, 50 Atl. 776.

Mechanic's Natl. Bank v. Roughead, 78 N. Y. Supp. 800.

Clark v. White, 12 Peter's 178-200, 9 Lawyers Ed. 1046.

Baum's Appeal, 113 Penn. St. 58; 4 Atl. 461.

IV.

This suit is also maintainable as ancillary to the law action brought by Mary E. Cronen against Walter Baker Moore.

Dewey v. Coal Co., 123 U. S. 329; 31 Law. Ed. 179.

South Penn. Oil Co. v. Oil Co., 140 Fed. 507.

Leigh v. Manufacturing Co., 127 Fed. 990.

The Cortes Co. v. Thanhauser, 9 Fed. 226.

Claflin v. McDermott, 12 Fed. 375.

ARGUMENT.

I.

The present suit concerns only to the settlement of the law action of Cronen v. Moore and the papers relating thereto executed and placed in escrow. We have seen from an examination of the evidence that a settlement of the law action was finally agreed to upon February 24, 1912. Every detail of that settlement was then agreed upon and embodied in the written memorials of the parties. The final details of the settlement were fixed and the execution of the papers took place in the office of the attorneys for Miss Cronen and in her presence. At that time there was signed a stipulation providing for a dismissal of the law action. (Exhibit 2, p. 50, Transcript). At that time and place Miss Cronen executed a release of Mr. Walter Baker Moore which is in evidence as Exhibit 3, page 51, Transcript. At the same time there was produced a certificate signed by Walter Baker Moore which is in evidence. (P. 52, Transcript). This certificate is in the exact form previously approved by Mr. Stevenson, attorney for Miss Cronen. (P. 55, Transcript). Great care was used apparently by the attorneys for Miss Cronen to see that she understood everything that was done and the scope and

effect of every paper that was included in the settlement. (Pp. 46, 47, 48 and 56, 57 and 72, 73 and 91, 92, 93, 94 and 95, Transcript). The settlement provided for the payment of $3,000.-00 and the deposit of these papers in escrow to be delivered upon payment to the escrow agent of the remaining sum of $3,000.00, which was to be done within 90 days. An escrow agreement was prepared and signed at the same time, which is in evidence. (Pp. 49 and 50, Transcript).

An examination of this escrow agreement will show that it was addressed to the Security Savings & Trust Company, selected by the parties to act as escrow agent. It recites that there is deposited with such company stipulation for the dismissal of the law action of Cronen v. Moore, also the release and discharge of Walter Baker Moore signed by Miss Cronen and also the statement or certificate signed by Mr. Moore. These are the only papers referred to in this escrow agreement and are all the papers appertaining to the settlement of the law action. The escrow agreement further recites that the settlement of all matters and things between the parties has been agreed upon, $3,000.00 in cash has been paid, and the balance is to be paid within 90 days; that upon the payment of the deferred installments of $3,000.00 to the Se-

curity Savings & Trust Company, to be paid over to Mr. Stevenson, attorney for Miss Cronen, the stipulation for dismissal and release of Mr. Moore were to be delivered to the attorney for Mr. Moore, and the statement or certificate signed by Mr. Moore was to be delivered to the attorneys for Miss Cronen. It is further provided that in the event the additional sum of $3,000.00 is not paid within the 90-day period fixed the escrow agreement should terminate and the stipulation for dismissal and the release should be returned to the attorneys for Miss Cronen and the certificate signed by Mr. Moore should be returned to his attorney. An examination of these papers will show that nothing was left uncertain and that the parties made a contract complete in every detail. In their brief counsel for appellant discuss at some length, and cite cases to, the proposition that a contract, whether in the nature of an escrow agreement, or otherwise, may rest partly in writing and partly in parol. So far as the present case is concerned a discussion of the proposition is purely academic. In this case the writings are complete. We submit that there is a controlling rule which excludes the consideration of any alleged parol stipulations in this case. It is a doctrine of quite universal application that all oral negotiations, or stipulations,

between the parties, preceding, or accompanying, the execution of a written instrument are regarded as merged in it. The Supreme Court of the State of Oregon, speaking through Mr. Justice Bean, stated the reason and scope of the rule in this language:

> "The reason of the rule, as explained by judges and text writers, is 'that the parties, by making a written memorial of their transaction, have implicitly agreed that, in the event of any misunderstanding, that writing shall be referred to as the proof of their act and intention; that such application as arose from the paper, by just construction or legal intendment, should be valid and compulsory on them; but that they would not subject themselves to any stipulations beyond their contract, because, if they meant to be bound by any such, they might have added them to their contract, and thus have given them a clearness, a force, and a direction which they would not have by being trusted to the memory of a witness.' And, where a written contract appears on its face to be complete, no addition, to, or contradition of, its legal effect by parol stipulations, preceding or accompanying its execution can be admitted, any more than its alteration through the same means in any other respect. The law controlling the operation of a written

contract becomes a part of it. The rule here referred to, so far as it extends, is inflexible."

Tallmadge v. Hooper, 37 Ore. 512.

The authorities cited under Point One supra, indicate that this rule is quite as inflexibly applied in the Federal Courts as in the courts of the various states.

II.

The papers appertaining to the settlement of the law action of Cronen v. Moore were deposited in the Security Savings & Trust Company annexed to, and in connection with, the escrow agreement relating thereto. At the same time, and in accordance with the terms of the settlement, the sum of $3,000.00 was paid to Mr. Stevenson, attorney for Miss Cronen, and by him accounted for to her, which sum she has retained, and according to her own testimony, has applied to her own use. (P. 142, Trans.). Long before the expiration of the period of 90 days within which, according to the escrow agreement, the remaining $3,000.00 was to be paid into the Security Savings & Trust Company, this sum was in fact paid into, or deposited with, such company to the order of the attorneys for Miss Cronen, in accordance with the escrow agreement, and notice given to Miss

Cronen through her attorneys that such deposit had been made. Prior to this time, and on April 4, 1912, and acting upon her own initiative, and without the advice of, or consultation with, her attorneys, Miss Cronen served notice upon the Security Savings & Trust Company of her intention to rescind her escrow agreement. We contend that she had no power or right to rescind the escrow contract. The decided cases uniformly hold that neither party to an escrow agreement can rescind or modify the same without the consent of the other, and that either party thereto at any time during the period fixed by the terms of the escrow contract may perform and demand fulfillment upon the part of the other. To this point are copious citations under Point Two. We quote from some of the decided cases.

In a case decided by the Supreme Court of Minnesota it was contended that one of the parties to an escrow agreement, by which certain deeds were deposited, had a right to withdraw the deeds from deposit before the expiration of the time fixed for the fulfillment of the agreement. Denying this contention the Court said:

> "We are not able to adopt the view that the deeds to Thoraldson of the lands in question might be withdrawn by the

grantor or his successor in interest. The deposit in escrow would be an idle ceremony and entirely nullify the objects of the law if this were permissible. It is elementary that the deposit of a deed in escrow subjects both parties to the conditions upon which it was deposited, and that neither can withdraw from the same; hence the party refusing to comply with the conditions may be compelled to fulfill them, or the delivery adjudged upon fulfillment by the other party."

Thoraldson v. Everts, 87 Minn. 168; 91 N. W. 468.

In a decision by the Supreme Court of California it appeared that a contract for the sale of land was entered into, and at the same time a deed was executed and deposited in escrow to be delivered to the purchaser when certain conditions were complied with. Subsequently and before the expiration of the time for compliance, the vendor demanded of the depositary the return of the deed. It was contended in the case that the vendor had a right to withdraw from the contract at any time, and that the depositary was merely the agent of the vendor. The Court denied the contention that the depositary was the agent of the vendor, held him to be the agent of both parties, and with respect to the claim that the vendor could

withdraw from, or rescind, the escrow agreement said:

> "We cannot concur in the view that Cox was the mere agent of the vendors, and held the paper as such, being bound to deliver the paper to the vendors when demanded of him by them. He was to hold it, and deliver it to the vendee when the money was paid; and the vendee was to make payment to Cox, and not to his vendors; and, further, to make payment to Cox for Austin, and not for his vendors. Cox held the release as an escrow, also to be delivered to Cannon when the purchase money was paid to Cox. The question is so clear that further discussion would darken instead of elucidating it.
>
> "The deed being then delivered as an escrow, it is no longer revocable by the vendor, but it will take effect whenever the condition has happened or been complied with on which it is to be delivered. Millett v. Parker, 2 Meto. (Ky.) 608, 616. In this case the court said of a deed delivered as an escrow: 'It cannot be revoked by the party who makes it, and he in whose favor it is made is entitled to it whenever the condition is complied with by which it becomes absolute.' In Shirley v. Ayres, 14 Ohio, 308, it was held that the depositary of an escrow was as

much the agent of the grantee as of the grantor. The Court said: 'He is as much bound to deliver the deed, on performance of the condition, as he is to withhold it until such performance.' From this it would clearly follow that the grantor cannot recall the deed after the delivery as an escrow; and, when the condition is complied with by the grantee, he is absolutely entitled to it. The Ohio supreme court in the case of Shirley v. Ayres, above cited, held that, inasmuch as the depositary of the escrow was the agent of the grantee as well as grantor, the deed takes effect the moment the condition is performed without any formal delivery into the hands of the grantee. In other words, it may be said, when the condition is performed, the depositary becomes the custodian of the grantee, holding the deed for him, and this possession as such custodian is the possession of the grantee. We think this rule is based on sound principles, and should be upheld."

Cannon v. Handley, et al, 72 Cal. 133; 13 Pac. 318.

In a later case the Supreme Court of California had occasion to consider a like question and disposed of it briefly, as follows:

"The deed from the appellant, Huff, to respondent was, in the hands of R. H.

McDonald, an escrow. (Cannon v. Handley, 72 Cal. 133, 140, 13 Pac. Rep. 315; Schmidt v. Deegan, (Wis.) 34 N. W. Rep. 83.) And being so, it could not be revoked by the appellant. Cannon v. Handley, supra; Knopf v. Hansen, (Minn.) 33 N. W. Rep. 781. The depositary was not the agent of the vendor alone, but of both parties, and, as such, was bound to deliver the instrument on performance of the condition provided for in the contract under which he held it. Cannon v. Handley, supra; Shirley v. Ayres, 14 Ohio, 307; Schmidt v. Deegan, supra."

McDonald v. Huff, 77 Cal. 279; 19 Pac. 499.

In a case decided by the Supreme Court of Utah it appeared that a deed was deposited in escrow pursuant to a contract, and that at the time a part of the consideration was paid. Thereafter, and before the expiration of the time when the purchaser should perform, the successor in interest of the vendor sought to repudiate the escrow agreement, and recall the deed which had been deposited. The Court held that the vendor could not repudiate, or rescind, using this language:

"The depositary of an escrow is the agent of both parties, and a contract so made and deposited is not revocable at

> the will of either party or their representatives, but may be enforced under the provisions of section 3935, Rev. St. If no date is fixed for the delivery or performance of the contract, a reasonable time is intended, and no default can attach until after a demand and failure or refusal to perform. 2 Warv. Vend. p. 774. The delivery of this deed in escrow rendered it absolute when the condition upon which it was made was fulfilled."
>
> Gammon v. Bunnell, 22 Utah 421; 64 Pac. 959.

It will be observed that in the quoted text reference is made to section 3935 Rev. St. In an earlier part of the opinion this section of the Revised Statutes is set forth in full. It does not refer to escrow agreements or deposits, but generally to the enforcement of contracts made by persons who thereafter died before conveyance. It therefore follows that the statement of the rule that an escrow contract is not revocable by either party is not in anywise controlled by or dependent upon any statutory provision.

The Supreme Court of Kansas stated the rule tersely thus:

> "Where a deed has been delivered as an escrow subsequent instructions by the grantor to the depositary can not change

the original nature of the transaction."

Grove v. Jennings, 46 Kan. 366; 26 Pac. 739.

In a later case the same Court went into the question more at length, and the following interesting discussion is contained in the opinion:

"Contrary to the view of the plaintiffs in error, the depositary of an escrow is regarded as an agent of both obligor and obligee, and he can neither return the deed or other instrument to the former without the latter's consent, nor deliver it to the latter without the consent of the former, save upon fulfillment of the agreed conditions. Roberts v. Mullenix, 10 Kan. 22; Grove v. Jennings, 46 Kan. 366, 26 Pac. 738; Lessee of Shirley v. Ayres, 14 Ohio, 307; Cannon v. Handley, 72 Cal. 133, 13 Pac. 315. In the case of Roberts v. Mullenix, supra, the delivery was made to the grantee without the knowledge of the grantor, and without fulfillment of the condition; but in the case of Grove v. Jennings, supra, a redelivery to grantor was made without the authority of the grantee, and without default in the performance of the conditions upon his part. According to these decisions, the depositary of an escrow is not the agent of the depositor, merely; and the agreement of deposit cannot be rescinded by him alone, and the

escrow withdrawn at his will. It would seem to follow, then, that the death of the depositor could have no greater effect to terminate the agency of the depositary and work a recall of the escrow, than could be declared rescission of the contract of bailment by the depositor in his life-time. We can think of no agreements inter partes, terminable by death, which are not equally terminable by the express will of one or the other of such parties before death. It is said, however, that instruments such as those in question can take effect only by delivery; that delivery is the act of the obligor personally, or some one lawfully authorized to represent him; that the obligor, being dead, cannot make the delivery, and no one can make the same for him, because no one can perform an act for a dead person. We do not understand that a manual delivery of an escrow is necessary to invest the obligee with title to the same, or to pass to him the subject of the grant. Our own decisions are to the contrary, and likewise, we think, those of all the courts. 'A note placed in escrow takes effect the instant the conditions of the escrow are performed, even though the depositary has not formally delivered it to the payee.' Taylor v. Thomas, 13 Kan. 217. The delivery, therefore, is constructively made the moment the con-

ditions requiring the same are performed. The second delivery, whether actual or constructive, operates retroactively, and, by relation back to the first delivery, is substituted to it in time and effect. This doctrine of relation by effect to the first delivery was countenanced by Lord Coke, who said: 'If the grantee dies between the first delivery and the deed becoming absolute, the deed is good, for there was delivery begun in the life of the parties; sed postea consummata existens by the performance of the condition takes its effect by force of the first delivery, without any new delivery.' Perryman's case, 5 Coke, 84. It is likewise countenanced by all the authorities. Peck v. Goodwin, Kirb. 64; Lessee of Shirley v. Ayres, 14 Ohio, 307; Taft v. Taft, 59 Mich. 186, 26 N. W. 426; Price v. Railroad Co., 34 Ill. 15; Bostwick v. McEvoy, 62 Cal. 496; Foster v. Mansfield, 3 Mete. (Mass.) 414; Ruggles v. Lawson, 13 Johns. 285; Wallace v. Harris, 32 Mich. 380; Prutsman v. Baker, 30 Wis. 644."

Davis v. Clark, 58 Kan. 100; 48 Pac. 565.

III.

This suit was the appropriate remedy to be invoked by Walter Baker Moore, defendant in the law action, to compel the delivery up of the papers deposited in escrow in accordance with

the stipulation thereof. The law action brought against him by Miss Cronen was still pending. The release executed by her, and to which Mr. Moore became entitled upon the payment of the last installment of $3,000.00, was in possession of the escrow agent who refused to surrender it, unless required so to do by a decree of some competent court because of the notice of recission given by Miss Cronen. The stipulation for the dismissal upon the merits of the law action was also in escrow, and in order to obtain possession of it, that it might be filed in the law action as a basis for a judgment of dismissal, it was necessary to invoke the equitable processes of this court. In a case quite analagous to the case at Bar the Supreme Court of the United States sustained the jurisdiction of a court of equity. Clark v. White, supra. Point Three. The other cases cited under this head are in point and directly sustain the jurisdiction of a court of equity.

IV.

It is likewise true that this case may be treated as ancillary to the action at law brought by Miss Cronen against Walter Baker Moore, and so considered, it was proper for the trial court to compel the fulfillment of the escrow agreement, direct a delivery of the papers de-

posited in escrow to the respective parties in accordance with the escrow agreement, and enjoin further prosecution of the law action. Many cases of this character have been brought and determined and the doctrine of these cases amply sustain our contention in this regard. In the law action there existed the jurisdictional amount and diversity of citizenship. The suit in equity in its essence involved the same amount in controversy in the law action, and in addition thereto there exists the necessary diversity of citizenship because it appears that the plaintiff is a citizen of Washington and the defendants are citizens of Oregon. However, in a suit ancillary to a law action, where the court had jurisdiction of the law action, diversity of citizenship is not material. This has been directly ruled by the Supreme Court in the case of Dewey v. Coal Co., supra. It would hardly be profitable to pursue at any length a discussion of the proposition that considered as a suit ancillary to the law action the court had power to grant the relief prayed for. Out of the many decided cases upon this question we have selected but a few that clearly state the rule and collate and review the authorities generally See cases cited under point IV.

V.

It seems to be contended by counsel for appellant that in some way the release which Miss Cronen signed of whatever claim she might have had, or thought she had, against Frank Allan Moore and Margaret Gleason Moore, his wife, and Miles C. Moore and the certificate which the two former were to sign, are in some way involved in the settlement of the law action against Walter Baker Moore, and complaint is made that, in the decree entered in the case at Bar, the court did not go further and require the delivery to Miss Cronen of such certificate. In our statement and discussion of the evidence we pointed out that this matter was entirely separate and distinct from the settlement of the law action against Walter Baker Moore, and further that this statement or certificate was produced in open court and tendered. At the expense of repetition we will again briefly review the evidence concerning this matter. The papers relating to the settlement of the law action against Walter Baker Moore consisted of

(a) Stipulation for the dismissal of the case, and

(b) Release of Walter Baker Moore signed by Miss Cronen, and

(c) A certificate entitled in the law action signed by Walter Baker Moore.

In the escrow agreement relating to the law action these three papers are specifically enumerated as the papers to be deposited, and the escrow agreement then recites in substance that a complete settlement of the law action has been agreed upon, that $3,000 in cash has been paid, that the papers referred to are to be deposited in escrow with the Security Savings & Trust Company, that within 90 days from the date of such escrow agreement the additional sum of $3,000.00 is to be paid to the Security Savings & Trust Company to the order of the attorneys for Miss Cronen, whereupon the papers deposited in escrow were to be delivered to the parties entitled thereto, as specified by the terms of the agreement. We thus see that so far as the law action was concerned the settlement was full and complete and had no reference to any other matter or thing whatsoever.

This suit was brought to compel the fulfillment of the escrow agreement, by the delivery of the papers to Walter Baker Moore to which he was entitled, and to restrain the further prosecution of the law action. The answer interposed by Miss Cronen in effect is a denial of the existence of the escrow agreement and a denial that any settlement was made. While

the answer contains several pages of matter in addition to these denials, nowhere is there pleaded any other or different contract than that set up in the bill in this case, nor does the appellant, defendant in the court below, ask for any additional relief than that sought by the bill. In other words, while appellant now complains that the decree should have been broader than it is and should have disposed of matters other than those involved in the controversy between Miss Cronen and Mr. Moore, the answer which appellant interposed lends no countenance to the contention that such additional relief was sought or desired. As a matter of fact there is now pending in the same court in which the present case was tried a suit in equity against Miss Cronen to compel the fullfillment of her agreement with respect to Frank Allan Moore, his wife, and Miles C. Moore. From what has been already said we submit it clearly appears that there is nothing in the agreements between the parties and nothing in the issues made by the pleadings which gives support to the contention of appellant.

The release of Frank Allan Moore, his wife, and Miles C. Moore, which Miss Cronen signed and the agreement with respect thereto, were introduced in evidence in the present case for the reason, as stated upon the trial, that in her

answer in this case appellant alleged that she had been induced by certain representations to sign a release purporting to release Walter Baker Moore, but which in fact released other members of his famliy as well, this contention being evidently based upon the recital in the release of Walter Baker Moore to the effect that it released him and his heirs and personal representatives. And the release of Frank Allan Moore, his wife, and Miles C. Moore, and the agreement with respect thereto, were offered in evidence for the purpose of showing that as a matter of fact she had executed an independent paper releasing Frank A. Moore and the others named in such release. The papers now referred to were prepared in the office of Logan and Stevenson, being dictated in their office to their stenographer in the presence of Miss Cronen. (Pp. 59, 60, 61 and 153, 154 and 155, Trans.). The release in question may be found upon pages 62 and 63, Transcript, and the agreement with respect thereto may be found on the preceding page. This agreement in substance provides that the release is to be deposited in escrow with the Security Savings & Trust Company, and upon the delivery to the trust company of a written statement signed by Frank Allan Moore and his wife, in the form set out in the agreement, for delivery to the attorneys

for Miss Cronen, the release is to be delivered to A. E. Clark. As fixing the time when this release was to be delivered, and the time when the certificate was to be delivered, it was provided that such delivery was to be made at the same time that the additional sum of $3,000.00 was paid to the appellant, being the final payment in the Walter Baker Moore settlement. This provision was inserted merely as fixing the time, and for no other purpose; and as indicating clearly that the settlement of the law action against Walter Baker Moore was in nowise dependent upon this collateral matter it is again recited in the agreement that, by virtue of another escrow contract, the papers relating to the Walter Baker Moore case were deposited in escrow with the Security Savings & Trust Company to be delivered upon the payment of the additional sum of $3,000.00. The way the matter of the release of Frank Allan Moore, his wife, and Miles C. Moore came up was this:

After the Walter Baker Moore case had been settled and the papers prepared and executed, Miss Cronen suggested that she would like also to have a certificate from some other members of the family whereupon she was informed by Mr. Clark that if she wanted such a paper she would have to sign a release of the

people who were to make the certificate. (Pp. 64 and 65, Transcript). The two matters, however, were entirely distinct as Mr. Stevenson testified in substance. Two separate escrow agreements were prepared, one relating to the settlement of the law action against Walter Baker Moore, and the other with respect to the certificate Miss Cronen wanted from some other members of the family and the release which she signed with respect to them. (P. 75, Transcript). Mr. Logan testified in substance to the same effect. He testified that the settlement of the Walter Baker Moore matter was absolute (P. 94, Transcript), and that after it had been settled the matter came up in an incidental way concerning a certificate by some other members of the Moore family and it was then agreed, to satisfy Miss Cronen, that a certificate in the form then agreed upon should be procured, and that she should sign a release which would be deposited in escrow, and when this certificate, to be signed by the other members of the family, was received ready for delivery, the release would be delivered over. (Pp. 97 and 98, Transcript). As a matter of fact, the certificate by Frank Moore and his wife was procured, was ready for delivery and was tendered into court upon the trial of this cause. Miss Cronen claims that she understood

that the certificate to be signed by Frank Moore and his wife was to be produced and delivered within a couple of days, which indicates that she did not connect this matter with the settlement of the Walter Baker Moore case, because under the plain terms of the escrow agreement the balance of the money was not required to be paid for 90 days. Concerning the Frank Allan Moore and his wife papers, she testified:

A. What I object to is that you did not get them as you promised by return mail.

Q. What you object to is that you did not get them by return mail. Did you expect, if it got back by return mail, it would be given immediately to you?

A. Surely.

Q. And the release of Frank delivered to me?

A. Surely.

Q. Without payment of the additional three thousand?

A. The payment of the additional three thousand had absolutely nothing to with that—

(Pp. 144, 145, Transcript).

A little later on in her testimony Miss Cronen clearly discloses why she undertook to rescind the escrow agreement relating to the law action against Walter Baker Moore:

Q. Let's go back to the Frank A. Moore

matter. Then, as I understand it, getting right down now, you have eliminated a lot of these matters in controversy, apparently. The only thing then that you take exception to is this, apparently, that the Frank A. Moore and wife vindication did not come back as soon as you thought it should. That is, it didn't come back by return mail.

A. Well, the fact that they all laughed around the country, and Mr. Lee told it broadly and the boys told it broadly that they got a "cheap settlement because they had the goods on her." And every little while I went to the office "Have you heard?" "No, not yet, but be patient, they will come. They will come." Now, on the 24th day of May, Mr. Logan asked me to come down to the office.

Q. Mr. Logan?

A. Mr. Logan in May. That was Saturday afternoon; the ninety days were up and he says: "The only way for you to get the vindication out of escrow is to go down and release the bank from that." I said "I am not going to take that. I don't want that." I told him what had been said about me; the vilest things that had been said about any woman, after they had all promised, and you had promised as their attorney.

(Pp. 145, 146, Transcript).

Evidently Miss Cronen was laboring under the delusion that someone had been villifying her. She seemed to charge the offense against Mr. Lee, and in her mind in some way connected him with Walter Moore. Just how this mistaken notion found lodgment in her mind is difficult to say. Much is said in the brief of counsel for appellant of the wrongs that their client suffered. The zeal of counsel in behalf of a fair client is probably a sufficient excuse for their supplementing the record in this regard with the activities of a sympathetic imagination. It is sufficient to say that no where does the record disclose that Walter Moore, or any other member of the Moore family said aught in disparagement of appellant. If there has not been adequate compliance by Frank Allan Moore and his wife, with the agreement under which the release of them signed by Miss Cronen was deposited in escrow, such defense may properly be made in the suit brought for the enforcement of that agreement. If any time was fixed for the delivery of the certificate signed by Frank Allan Moore and his wife, by the agreement by which the release of them went into escrow, clearly that period was 90 days. Long before the expiration of that period Miss Cronen had served notice that she intended to rescind all escrow agreements. This notice of recission

may be found on pages 109 and 110 of the transcript, is directed to the Security Savings & Trust Company, and among other things, recites "That you are hereby notified that I have rescinded any and all agreements heretofore made with Walter Baker Moore, Frank Allan Moore, Margaret Gleason Moore and Miles C. Moore or A. E. Clark, their attorney, etc." And yet upon the trial Miss Cronen would have the court believe that she did not know until the trial that there was any escrow agreement relating to the release of Frank Allan Moore, his wife and Miles C. Moore, or the certificate to be signed by the two former, ever made or deposited in escrow and that she at all times believed that the release referred to had been delivered to, and was in the possession of Mr. Clark. (Pp. 131, 132, 133, 134, 135, 136, 137, 138 and 139). While the evidence clearly shows compliance with the escrow agreement touching the Frank A. Moore, et al, papers, and shows that the certificate which Frank A. Moore and his wife were to sign was signed, produced ready for delivery and produced upon the trial, (P. 113), even if there was a technical non-observance of such an agreement it was waived by Miss Cronen by her notice of attempted recission and by her conduct. Miss Cronen attempted to repudiate the escrow agreement with respect to

the Frank Allan Moore, et al, papers, as well as the other distinct escrow agreement made with respect to the settlement of the law action against Walter Baker Moore more than six weeks prior to the time fixed for performance. After that the parties to either of the escrow agreements were not required to do anything more than to hold themselves ready, willing and able to perform, and proceed in due time, and in a proper manner, to judicial enforcement of their rights. Speaking to this subject the Supreme Court of Oregon, said:

> "It may be said to be well settled that such acts or declarations as amount to a recission or repudiation of the contract, and an absolute and positive denial of any and all duties under it, may render strict performance before suit unnecessary, upon the ground that it would be a useless and a vain thing to tender the stipulated performance, knowing that it would not be accepted. The denial of the right to make the tender, or the positive and unqualified assertion by the party who may insist upon punctuality or exact performance that thenceforth he is not bound—and this state of affairs may be inferred from unequivocal acts as well as direct assertion—is, in effect, a waiver of strict performance, and a notice that the other party may as well proceed in due

time to the enforcement of the obligation, as otherwise no performance could be obtained at his hands: Brock v. Hidy,, 13 Ohio St. 306; White v. Dobson, 17 Gratt. 262; Maughlin v. Perry, 35 Md. 352; Deichmann v. Deichmann, 49 Mo. 107; Lowe v. Howard, 139 Mass. 133 (29 N. E. 538); Gray v. Daugherty, 25 Cal. 266; Baumann v. Pinckney, 118 N. Y. 604, (23 N. E. 916); Brown v. Eaton, 21 Minn. 409; Mattocks v. Young, 66 Me. 459; Dulin v. Prince, 124 Ill. 76 (16 N. E. 242); Mansfield v. Hodgdon, 147 Mass. 304 (17 N. E. 544).

Clarno v. Grayson, 30 Or. 126, 127.

The following cases are likewise to the same point:

Hills as Receiver v. National Albany Exchange Bank, 105 U. S. ———; 26 Law Ed. 1052.

Dublin v. Prince, 16 N. E. 243.

Baumann v. Pinckney, 23 N. E. 909.

Mansfield v. Hodgdon, 17 N. E. 548.

Holt v. Trust Co., 21 L. R. A. (N. S.) 691, 72 Atl. 301 (N. J.)

Weinberg v. Naher, 51 Wash. 591, 99 Pac. 736, 22 L. R. A. (N. S.) 956.

Gray v. Smith, 83 Fed. 825.

State of Louisana v. Police Jury, etc., 14 L. R. A. (N. S.) 794; 45 Southern 47.

Wright v. Astoria Company, 45 Ore. 228-229.

Boyd v. American Savings & Trust Co., 82 Fed. 904.

In conclusion it may be fairly insisted that the right of appellee to the decree entered in this case was established beyond all controversy. The amount paid appellant by appellee in the settlement of the law action, considering all the circumstances, was generous. In that case she was represented by two able and respected members of the Portland Bar whose zeal and fidelity in behalf of their client cannot be doubted. The negotiations which resulted in the settlement covered a period of months, during which time these attorneys representing Miss Cronen insisted with vigor and pertinacity that their client should receive in settlement a much larger sum than the defendant in that case was willing to give. Their labors in this regard resulted in securing for their client a sum which even they must admit was quite adequate. All of the details of the settlement were agreed upon after much discussion and consummated in their office, and in the presence of their client who, according to her own testimony and the testimony of these attorneys, examined with almost suspicious care everything that was done. The evidence of these attorneys

in support of the settlement is clear and emphatic to the point that what was done was done understandingly by all of the parties.

Under these circumstances, we respectfully submit that the decree appealed from should be affirmed.

ALFRED E. CLARK and
MALCOLM H. CLARK,
Attorneys for Appellee.